



Monday, 8 November 2021

**API ENTERS INTO SCHEME IMPLEMENTATION DEED WITH WESFARMERS
AND TRANSACTION IS RECOMMENDED**

Australian Pharmaceutical Industries (ASX:API) ("API") today announced that it has entered into a Scheme Implementation Deed ("SID")¹ with Wesfarmers Limited (ASX:WES) ("Wesfarmers") under which it is proposed that a wholly owned subsidiary of Wesfarmers will acquire 100% of the shares in API that Wesfarmers does not already own, by way of a scheme of arrangement ("Scheme"), for cash consideration of \$1.55 per API share. The SID provides for the payment of fully franked dividends of up to a maximum of 5 cents per API share, including any final dividend for the financial year ended 31 August 2021. The cash consideration of \$1.55 will be reduced by the cash component of any such dividend.

The API Board unanimously recommends that API shareholders vote in favour of the Scheme, and each director intends to vote all of the API shares held or controlled by them in favour of the Scheme, in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of API shareholders.

The cash price of \$1.55 per API share represents:

- a 35.4% premium to API's undisturbed closing share price as at 9 July 2021 of \$1.145; and
- a 36.8% premium to the one-month volume weighted average price to 9 July 2021 ("VWAP") of \$1.133 per share.

As advised in the 2021 full year results release announcement, the API Board has resolved to pay a fully franked final dividend of 2 cents per API share in respect of the six months ended 31 August 2021. In addition, API intends to pay a fully franked special dividend of up to 3 cents per share as part of the Scheme implementation.

¹ Capitalised terms have the meaning given to them in the SID, unless otherwise defined in this announcement.





BACKGROUND TO THE SCHEME IMPLEMENTATION DEED

The following related events have been announced prior to today's announcement:

- 12 July 2021, API announced it had received an unsolicited, conditional non-binding indicative offer from Wesfarmers at \$1.38 cash per share ("Original Offer");
- 29 July 2021, API announced it had rejected the Original Offer;
- 16 September 2021, API announced it had received a revised non-binding indicative offer from Wesfarmers at \$1.55 cash per share and confirmatory due diligence would commence;
- 27 September 2021, API announced it had received an unsolicited non-binding indicative offer from Sigma Healthcare Limited (ASX:SIG) ("Sigma") to acquire API for 2.05 Sigma shares and \$0.35 cash per API share, which implied a value of \$1.57 per API share based on Sigma's closing price of \$0.595 per share on 24 September 2021;
- 7 October 2021, Wesfarmers announced it had exercised its option over Washington H Soul Pattinson's API shareholding and acquired 19.3% of API shares on issue; and
- 5 November 2021, Sigma advised that it had withdrawn its unsolicited non-binding indicative offer.

Wesfarmers has completed its due diligence and reconfirmed its proposal to acquire 100% of the shares in API for cash consideration of \$1.55 per share.

DETAILS OF THE SCHEME IMPLEMENTATION DEED

The implementation of the Scheme is subject to the standard conditions in addition to the requirement for approval by the Australian Competition and Consumer Commission.

The SID contains customary exclusivity provisions including no shop, no talk, due diligence restrictions, a notification obligation, as well as a matching right in favour of Wesfarmers. The SID also details circumstances under which API may be required to pay Wesfarmers a break fee and circumstances where Wesfarmers may be required to pay API a reverse break fee, both equivalent to approximately \$7.7 million.

Full details of the conditions of the Scheme and other agreed terms are set out in the SID, a copy of which is attached to this ASX announcement.



INDICATIVE TIMETABLE AND NEXT STEPS

API shareholders do not need to take any action at the present time.

A Scheme Booklet containing information relating to the Scheme, the Independent Expert's Report on whether the Scheme is in the best interests of API shareholders, the reasons for the API directors' unanimous recommendation and details of the Scheme meeting, is expected to be mailed to API shareholders in early calendar year 2022. API shareholders will then be asked to vote on the Scheme at the Court convened Scheme meeting at a time to be scheduled.

It is anticipated the scheme transaction will complete in the first quarter of calendar year 2022.

This announcement is authorised for release by the Board of Directors of API.

For further information:

Investors

Carolyn Ireland
API
T: +61 403 045 905

Media

James Tait
Res Publica
T: +61 400 304 147



EXECUTION VERSION

Scheme Implementation Deed

Australian Pharmaceutical Industries Limited

ACN 000 004 320

WFM Investments Pty Ltd

ACN 651 355 501

Wesfarmers Limited

ACN 008 984 049

8 November 2021

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules for interpreting this document.....	21
1.3 Non-Business Days	22
2. SCHEME STRUCTURE	22
2.1 Agreement to propose and implement Scheme	22
2.2 No amendments to Scheme without consent	22
2.3 Scheme Consideration	22
2.4 Wesfarmers guarantee	23
2.5 Withholding.....	23
3. CONDITIONS.....	24
3.1 Obligations not binding until Conditions satisfied.....	24
3.2 Conditions	24
3.3 Waiver of Conditions	26
3.4 Satisfaction of Conditions.....	26
3.5 Notifications.....	28
3.6 If a Condition is not fulfilled or waived.....	29
3.7 Failure to agree	29
3.8 Parties to provide certificate to Court	30
3.9 Court approval	30
3.10 Scheme voted down.....	30
4. IMPLEMENTATION OBLIGATIONS	31
4.1 Timetable	31
4.2 API obligations	31
4.3 Wesfarmers' obligations.....	35
4.4 Scheme Booklet content and responsibility statements	37
4.5 Conduct of court proceedings	38
4.6 Permitted Dividends	38
4.7 API Performance Rights	39
5. CONDUCT OF BUSINESS	39
5.1 Protocols	39
5.2 Specific obligations	40
5.3 Exceptions to conduct of business provisions.....	41
6. INTEGRATION PLANNING.....	41
6.1 Protocols	41
6.2 Access to information	41
6.3 Check-ins	43
6.4 Change of Control Provisions.....	43
7. APPOINTMENT OF DIRECTORS AND RELEASES	44
7.1 Appointment of directors	44
7.2 Deeds of insurance and indemnity	45
7.3 Release	45
8. ANNOUNCEMENT	46
8.1 Announcement of execution	46
8.2 No Announcement	46
8.3 Consultation on Announcements.....	46

8.4	Excluded Announcements	46
9.	CONFIDENTIALITY AND PROTOCOLS	47
10.	EXCLUSIVITY	47
10.1	Existing discussions	47
10.2	No shop, no talk and no due diligence	47
10.3	Fiduciary exception	49
10.4	Provision of information	49
10.5	Return of non-public information	49
11.	NOTIFICATION AND MATCHING RIGHTS	49
11.1	Notification	49
11.2	Matching right	50
12.	BREAK FEE.....	51
12.1	Background.....	51
12.2	Payment by API to Wesfarmers Sub	52
12.3	Payment by Wesfarmers Sub to API	53
12.4	Demand for payment	53
12.5	No payment if Scheme becomes Effective	54
12.6	Other Claims	54
12.7	Compliance with law	54
13.	TERMINATION	55
13.1	Termination by either party.....	55
13.2	Termination by Wesfarmers Sub	56
13.3	Termination by API	56
13.4	Effect of termination	56
13.5	Notice of termination.....	57
13.6	Remedies.....	57
14.	REPRESENTATIONS AND WARRANTIES	57
14.1	Mutual Representations and Warranties	57
14.2	API Representations and Warranties.....	58
14.3	Wesfarmers Sub and Wesfarmers Representations and Warranties	60
14.4	Qualifications on API Representations and Warranties	61
14.5	No representations made on economic or future matters	61
14.6	Reliance on Representations and Warranties	61
14.7	When Representations and Warranties are given	62
14.8	Information on Representations and Warranties	62
14.9	Survival of Representations and Warranties	62
15.	INDEMNITIES	62
15.1	Indemnities by API.....	62
15.2	Indemnities by Wesfarmers and Wesfarmers Sub	62
15.3	Survival of indemnities	63
16.	GST	63
16.1	GST pass on.....	63
16.2	Tax invoice	63
16.3	Consideration exclusive of GST	63
16.4	Adjustments.....	63
16.5	Reimbursements.....	64
16.6	Survival.....	64
17.	NOTICES	64
17.1	How to give a notice	64

17.2	When a notice is given	64
17.3	Address for notices	65
18.	GENERAL	65
18.1	Amendment	65
18.2	Assignment.....	65
18.3	Governing law	66
18.4	Liability for expenses.....	66
18.5	Giving effect to this document.....	66
18.6	Variation of rights	66
18.7	No partnership or agency.....	66
18.8	Operation of this document.....	66
18.9	Operation of indemnities.....	67
18.10	Consents	67
18.11	No merger	67
18.12	Inconsistency with other documents.....	67
18.13	Counterparts	67

Schedule

1	CAPITAL STRUCTURE	68
2	API SPECIFIED ENTITIES	69
3	SCHEME OF ARRANGEMENT	70
4	DEED POLL	71

THIS DEED is made on 8 November 2021

BETWEEN:

- (1) **Australian Pharmaceutical Industries Limited** (ACN 000 004 320) whose registered office is at Level 5, 250 Camberwell Road, Camberwell, Victoria 3124 (**API**);
- (2) **WFM Investments Pty Ltd** (ACN 651 355 501) whose registered office is at Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000 (**Wesfarmers Sub**); and
- (3) **Wesfarmers Limited** (ACN 008 984 049) whose registered office is at Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000 (**Wesfarmers**).

RECITALS:

- (1) API, Wesfarmers Sub and Wesfarmers have agreed that Wesfarmers Sub will acquire all of the ordinary shares in API by way of a scheme of arrangement between API and the holders of its ordinary shares under Part 5.1 of the Corporations Act.
- (2) Wesfarmers Sub is a wholly-owned subsidiary of Wesfarmers.
- (3) API intends to propose the Scheme and issue the Scheme Booklet in accordance with the terms of this document.
- (4) API, Wesfarmers Sub and Wesfarmers have agreed to implement the Scheme, and to undertake other associated matters, in accordance with the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

ACCC means the Australian Competition and Consumer Commission.

Adviser means any individual who is engaged to provide professional advice (including accounting, consulting, financial or legal advice).

Agreed Form means, in relation to any document, such document in the form agreed between API and Wesfarmers Sub, such agreement not to be unreasonably withheld or delayed.

AMEX Agreement means the alliance agreement between American Express Australia Limited and API dated 1 January 2018 as amended by the amendment agreement – alliance agreement between American Express Australia Limited and API dated 4 February 2021.

Announcement means a press release, announcement or other public statement (other than a draft explanatory statement, an explanatory statement or supplementary explanatory statement as required under Part 5.1 of the Corporations Act).

API Board means the board of directors of API as constituted from time to time.

API Break Fee means \$7,738,000 (exclusive of GST).

API Consolidated Tax Group means the consolidated group of which API is the head company. In this definition, "consolidated group" and "head company" have the respective meanings given by the *Income Tax Assessment Act 1997* (Cth).

API Due Diligence Information means all written information relating to the business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of the API Group provided or made available in the Data Room by or on behalf of the API Group to Wesfarmers on or before the Due Diligence End Date.

API Group means API and its subsidiaries, and **API Group Member** means API or any of its subsidiaries.

API Indemnified Party means:

- (a) each API Group Member; and
- (b) any person who was a director, officer or employee of an API Group Member at any time prior to the Implementation Date.

API Material means information prepared by API for inclusion in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by all applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules, and any other information that is material to the making of a decision by API Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of API and has not previously been disclosed to API Shareholders, other than the Wesfarmers Material and the Independent Expert's Report.

API Performance Right means a performance right issued by API under employee incentive arrangements of the API Group.

API Performance Rights Cap means 731,730 API Performance Rights.

API Permitted Event means an event:

- (a) which has been Fairly Disclosed in the API Due Diligence Information;
- (b) which has been Fairly Disclosed in the Public Register Information;
- (c) which is expressly permitted or required to be done or procured under this document or the Scheme (including, without limitation, the exercise of any discretion by the API Board, or any other action, which is in accordance with clause 4.7);
- (d) which is required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles, contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed in the API Due Diligence Information or disclosed in the Public Register Information, before the date of this document or otherwise in accordance with this document) or by a Government Agency;
- (e) which is within the knowledge of Wesfarmers Sub before the date of this document; or
- (f) in respect of which Wesfarmers Sub consents in writing.

API Prescribed Event means the occurrence of any of the following after the date of this document:

- (a) **(share conversion)** API converting all or any of its shares into a larger or smaller number of shares;
- (b) **(capital reduction)** API resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) **(buy-back)** any API Group Member:
- (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(dividends)** API declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to API Shareholders, other than a Permitted Dividend;
- (e) **(issue of securities)** any API Group Member issuing shares or securities convertible into shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than:
- (i) to an API Group Member;
 - (ii) the issue of API Performance Rights; or
 - (iii) pursuant to the grant, exercise, vesting or conversion of any API Performance Rights in accordance with clause 4.7,
- provided that the aggregate number of API Performance Rights issued pursuant to this paragraph (e) may not exceed the API Performance Rights Cap;
- (f) **(change to constitution)** an API Group Member adopting a new constituent document or modifying or repealing any of its constituent documents;
- (g) **(disposals)** an API Group Member disposing, offering to dispose or agreeing to dispose of the whole, or a substantial part, of its business or property (and to avoid doubt, "dispose" includes sell, transfer, grant an option over, declare or create a trust over, surrender, allow to lapse or encumber);
- (h) **(Security Interests)** an API Group Member granting, or agreeing to grant, any Security Interest over the whole, or a substantial part, of its business or property; or
- (i) **(Insolvency Event)** an Insolvency Event occurring in relation to any API Group Member,

other than any API Permitted Event.

API Regulated Event means the occurrence of any of the following after the date of this document:

- (a) ***(acquisitions and disposals)** an API Group Member acquiring or disposing of, or entering into or announcing any agreement for the acquisition or disposal of, any business (including any one or more assets or shares in any company), or entering into any corporate transaction, having a market value that in aggregate is, or the consideration for which in aggregate is, \$10,000,000 or more;

- For personal use only
- (b) **(new business line)** an API Group Member entering into any new line of business in which the API Group was not engaged in as of the date of this document, whether by way of acquisition or otherwise;
 - (c) **(Material Contracts and Material Authorisations)** an API Group Member varying, terminating or allowing to lapse or expire any Material Contract or Material Authorisation;
 - (d) **(contracts)** an API Group Member:
 - (i) *entering into, or altering in any material respect, any:
 - (A) procurement contract (including any service or technology contract) or commitment (including in respect of technology) requiring payments by the API Group in excess of \$2,500,000 (individually) on an annual basis or in excess of \$12,500,000 in respect of the term of the contract; or
 - (B) supply or distribution contracts or commitments requiring payments by the API Group in excess of \$15,000,000 (individually) on an annual basis or in excess of \$75,000,000 in respect of the term of the contract, other than any alteration made in the ordinary course or required by law;
 - (ii) *agreeing to incur or incurring capital expenditure of more than \$5,000,000 (individually) or \$20,000,000 (in aggregate);
 - (iii) waiving any material Third Party default or accepting as a compromise of a matter less than the full compensation due to a member of the API Group where the financial impact of the default or compromise on the API Group will be in excess of \$2,500,000 (individually or in aggregate), in each case, net of any amount specifically provisioned by the API Group in respect of such default or matter and disclosed in the API Due Diligence Information;
 - (iv) entering into, or materially altering the material terms of, any Franchise Agreement with a person that is a Franchisee as at the date of this document so that the new or amended terms of the Franchise Agreement are materially inconsistent with those entered into by API with that person prior to the date of this document and as disclosed in the API Due Diligence Information, other than in the ordinary course of its business; or
 - (v) entering into, or materially altering the material terms of, any Franchise Agreement with a person who is not a Franchisee as at the date of this document on terms that are materially inconsistent with those entered into by API generally prior to the date of this document and as disclosed in the API Due Diligence Information, other than in the ordinary course of its business;
 - (e) **(restraints)** an API Group Member entering into a contract or commitment restraining an API Group Member from competing with any person or conducting activities in any market, other than in the ordinary course of its business;
 - (f) **(write-downs)** an API Group Member writing-down any of its material assets other than in accordance with applicable accounting standards or law;
 - (g) **(finance)** an API Group Member incurring any additional Financial Indebtedness (other than drawdowns under existing banking facilities) or entering into, or amending, any agreements in respect of Financial Indebtedness;

- (h) ***(varying employment arrangements)** an API Group Member materially altering, varying or amending any contractual right under any employment, consulting, severance or similar agreement or arrangement with one or more of its officers, directors, other executives or employees whose annual remuneration, as at the date of this document, is \$300,000 or more, or accelerating or otherwise materially increasing compensation or benefits for any of the above, in each case other than pursuant to:
- (i) contractual arrangements in effect on the date of this document and which are contained in the API Due Diligence Information; or
 - (ii) API's policies and guidelines in effect on the date of this document and which are contained in the API Due Diligence Information,
- provided that the aggregate of all increases in compensation or benefits is no greater than \$2,000,000; or
- (iii) the grant, exercise, vesting or conversion of any API Performance Rights as required by clause 4.7;
- (i) ***(termination and retention benefits)** an API Group Member paying any of its Senior Executives a termination or retention payment, other than in accordance with contractual arrangements in effect on the date of this document and which are contained in the API Due Diligence Information;
- (j) ***(LTIP and STIP)** API amending in any material respect the terms of the LTIP or STIP, provided that any waiver of any such terms will not constitute an amendment;
- (k) ***(Financial Adviser)** an API Group Member amending in any material respect any arrangements with its Financial Adviser, or entering into arrangements with a new Financial Adviser, in respect of the Scheme or a Competing Proposal;
- (l) ***(material proceedings)** an API Group Member:
- (i) receiving notice of any material investigation, prosecution, arbitration, litigation or dispute threatened against an API Group Member which could reasonably be expected to give rise to a liability for the API Group in excess of \$10,000,000, other than in relation to the Franchisee Claims (**Material Proceedings**), and, for the avoidance of doubt, which is not frivolous or vexatious, or circumstances arising which could reasonably be expected to give rise to any Material Proceedings; or
 - (ii) settling, resolving or otherwise taking any steps that are materially adverse to the API Group in respect of the Franchisee Claims (including any action or inaction with an insurer of the API Group which prejudices, or might prejudice, API's coverage under a policy that might respond in relation to a Franchisee Claim);
- (m) ***(disputes with Franchise Regulators)** an API Group Member settling, resolving or otherwise taking any steps that are materially adverse to the API Group in respect of any dispute or material written correspondence with any Franchise Regulator;
- (n) **(not defending or pursuing Claims)** an API Group Member not defending against any Claims or not pursuing any appeals and judicial reviews against judgments or orders adverse to the interests of the API Group, unless not doing so is in the ordinary course of its business;

- (o) **(insurances)** an API Group Member doing anything that would make any policies of insurance held by an API Group Member void or voidable, that would permit an insurer to cancel a relevant policy or refuse or materially reduce a claim, or would otherwise limit any API Group Member's ability to claim under any insurance;
- (p) **(award compliance)** an API Group Member fails to materially comply with any obligations under employment and industrial laws, employment contracts, industrial agreements and awards or codes of conduct and practice relevant to conditions of service;
- (q) ***(accounting policy)** an API Group Member changing any accounting policy applied by it to report its financial position other than any change in policy required by a change in accounting standards or law;
- (r) **(tax)** an API Group Member doing anything that would result in a change in the API Consolidated Tax Group; or
- (s) **(agreement)** an API Group Member agreeing to do any of the things set out above, excluding any API Permitted Event.

API Representation and Warranty means a representation and warranty given or made by API in clause 14.1 or 14.2.

API Share means a fully paid ordinary share in API.

API Shareholder means a person or persons (in the case of joint shareholdings) entered in the Register as a holder of API Shares.

API Shareholder Approval means a resolution in favour of the Scheme being passed by the required majorities of API Shareholders (other than Excluded Shareholders) under section 411(4)(a)(ii) of the Corporations Act.

API Specified Entities means the API Group Members set out in Schedule 2.

Approach Notice means a notice setting out all material details of an actual, proposed or potential Competing Proposal including, without limitation, the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, the consideration offered or proposed (including price and form of consideration), all material terms and conditions (which, for the avoidance of doubt, will include conditions precedent, termination events and proposed deal protection arrangements), the proposed timetable of the Competing Proposal and all information the relevant proposal provides regarding the funding of the Competing Proposal, in each case to the extent known by API.

Approval Date means the date that is two Business Days before the Scheme Meeting (including any adjournment or postponement of that meeting).

Arrotex Agreements means:

- (a) the distribution agreement between API Services Australia Pty Ltd and Arrotex Pharmaceuticals Pty Ltd dated 17 June 2020;
- (b) the memorandum of understanding between API Services Australia Pty Ltd and Arrotex Pharmaceuticals Pty Ltd dated 15 June 2020;
- (c) the confidential trading agreement between API Services Australia Pty Ltd and Arrow Pharmaceuticals Pty Ltd dated October 2020; and

- (d) the specific product rebate agreement between API and Arrow Pharmaceuticals Pty Ltd dated 1 August 2019.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12(2) of the Corporations Act, where API is the "designated body".

ASX means the Australian Securities Exchange or ASX Limited (ACN 008 624 691), as the context requires.

ASX Listing Rules means the listing rules of ASX.

ATO means the Australian Taxation Office.

Australia Post Agreement means the services agreement between API and Australian Postal Corporation dated 12 October 2017.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it from or by a Government Agency; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Boots Agreement means the agreement for supply of products between API and Boots International Limited.

Business Day:

- (a) when used in relation to the Implementation Date and the Scheme Record Date, has the meaning given in the ASX Listing Rules; and
- (b) in all other cases, means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Victoria and Perth, Western Australia.

Camellia Distribution Centre means the distribution centre located at Unit 1, Camellia Estate Business Park, 11 Grand Avenue, Camellia NSW 2142.

CCA means the Competition and Consumer Act 2010 (Cth).

CGT Withholding Law means the foreign resident capital gains tax withholding law in Subdivision 14-D of Schedule 1 of the TAA.

Change of Control Contracts means:

- (a) the CSO Deed;
- (b) the Marsden Park DC Lease;
- (c) the Wingfield DC Lease;
- (d) the Boots Agreement;

- (e) the Australia Post Agreement;
- (f) the AMEX Agreement;
- (g) the Sisu Agreement; and
- (h) the Pharmacy Platform MOU.

Change of Control Provision has the meaning given in clause 6.4(a).

Claim means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Class Ruling has the meaning given in clause 4.6.

Commissioner means the Commissioner of Taxation of the Commonwealth of Australia.

Competing Proposal means any expression of interest, proposal, offer, transaction, agreement or arrangement which, if entered into or completed substantially in accordance with its terms, could result in:

- (a) a person other than any Wesfarmers Group Member (either alone or together with one or more Associates), directly or indirectly:
- (i) acquiring Control of API or any API Group Member which holds all, a substantial part or a material part of the business or assets of the API Group;
 - (ii) acquiring an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or a relevant interest in more than 10% of the API Shares;
 - (iii) acquiring, becoming the holder of, or having a right to acquire an economic interest in all or a substantial part of the business, or any of the material assets, of the API Group (where a material asset of the API Group is an asset representing more than 10% of the value of the API Group's total consolidated assets); or
 - (iv) otherwise acquiring Control of, or merging with, API or any other API Group Member holding a substantial or a material part of the assets of the API Group, whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement; or
- (b) the Scheme not being able to be implemented on the basis set out in this document.

Condition means a condition precedent set out in clause 3.2 and **Conditions** means all of them.

Confidentiality Deed means the confidentiality deed between API and Wesfarmers in respect of the proposed Scheme dated 16 September 2021.

Consents has the meaning given in clause 6.4(b)(i)(C).

Consumer Brands Exit means the proposed exit, by the API Group, from its consumer brands business and includes:

- (a) the completion of the sale and leaseback of the property located at 172 Plunket Avenue, Manukau, Auckland City;
- (b) the termination of its arrangements with TW&CM Pty Ltd trading as Terry White Chemmart;
- (c) the cessation of its arrangements with PHARMAC;
- (d) the cessation of its arrangements with Avallon Pharmaceuticals Pty Ltd and Noumed Pharmaceuticals Pty Ltd; and
- (e) any other arrangements required to facilitate the exit.

Control has the meaning given in section 50AA of the Corporations Act.

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

Counter Proposal has the meaning given in clause 11.2(b)(iii).

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing between API and Wesfarmers Sub.

COVID-19 means SARS-CoV-2 or COVID-19 (or any mutation, variation or derivative), including any subsequent waves or outbreaks.

COVID-19 Measures means any quarantine, workforce reduction, vaccination program, travel restriction, lockdown, social distancing, shut down, closure, sequester, safety or similar laws, rules, regulations, directives, guidelines or recommendations implemented by any Government Agency or any API Group Member in response to the foregoing, in connection with or in response to COVID-19.

CSO Deed means the deed of agreement between the Commonwealth of Australia and API dated 29 March 2019 (as amended and restated).

Data Room means the online data room established by API in connection with the Scheme.

Deed Poll means a document in the form or substantially in the form of Schedule 4, or in such other form as is agreed in writing between API and Wesfarmers Sub.

Defaulting Party has the meaning given in clause 13.1(d).

Due Diligence End Date means 7.00 pm on 7 November 2021, or such later date or time as API and Wesfarmers agree in writing.

EBITDA means earnings before interest taxes, depreciation and amortisation for the consolidated API Group and as adjusted by applying the following principles:

- (a) including in the calculation of EBITDA the financial impact of the lease expenses incurred by any API Group Member and reported in accordance with AASB 16;
- (b) excluding from the calculation of EBITDA the financial impact of the following on the consolidated API Group:

- (i) **(contemplated transaction)** costs or expenses incurred by an API Group Member in relation to the Scheme (including adviser fees, consulting, legal, financial or accounting costs that are incremental to business as usual costs);
- (ii) **(revenue or profit from non-operating activities)** revenue or profit from non-operating activities limited to gains or losses on sales of assets, insurance gains;
- (iii) **(costs or losses from non-operating activities)** costs or losses arising from non-operating activities limited to losses on any sale of assets;
- (iv) **(unrealised fair value gains or losses)** any unrealised gains or losses on any hedge or swap arrangements and in relation to investment property;
- (v) **(non-recurring items)** any non-recurring items; and
- (vi) **(changes in accounting assumptions)** any material changes in accounting assumptions and judgments, limited to those for which there is no objective evidence to justify the change,

without double-counting an amount which may fall within one or more of the items in subparagraphs (b)(i) to (b)(v) of this definition.

Effective 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) of the Corporations Act in relation to the Scheme.

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

End Date means:

- (a) the date that is nine months after the date of this document; or
- (b) such other date as agreed in writing between the parties (including under clause 3.6(g) or otherwise).

Excluded Shareholder means any API Shareholder who is a Wesfarmers Group Member or any API Shareholder who holds any API Shares on behalf of, or for the benefit of, any Wesfarmers Group Member and does not hold API Shares on behalf of, or for the benefit of, any other person as at the Scheme Record Date.

Exclusivity Period means the period commencing on the date of this document and ending on the earlier of:

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

Fairly Disclosed means any information disclosed in sufficient detail and with sufficient specificity so as to enable a reasonable and sophisticated recipient of the relevant information (or one of its Representatives) who is experienced in transactions similar to the transactions contemplated by this document and experienced in an industry similar to the industry in which the businesses conducted by the API Group operate to identify the nature and scope of the relevant matter, event or circumstance and the fact it may have financial,

operational or other consequences and be capable of properly assessing those consequences.

Financial Adviser means any financial adviser retained by a party in relation to the Scheme or a Competing Proposal from time to time.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) finance or capital lease;
- (e) factoring or other working capital arrangements;
- (f) swap or hedge arrangement, financial option, futures contract or analogous transaction;
- (g) counter indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; or
- (h) obligation to deliver goods or provide services paid for in advance by any financier (except to the extent consistent with past practices of the API Group as disclosed in the API Due Diligence Information),

other than any debt or other monetary liability (whether actual or contingent) in respect of any Permitted Dividend.

First Court Date means the first day of the hearing of the Court of an application for an order under section 411(1) of the Corporations Act convening the Scheme Meeting.

Franchise means any grant by an API Group Member to any person of the right to engage in or carry on a business, or to sell or offer to sell any product or service, using or in association with any Authorisation, trademark, system or other intellectual property owned by or in the possession of an API Group Member.

Franchise Agreement means any contract, agreement, arrangement or understanding pursuant to which an API Group Member grants or has granted any Franchise and, for the avoidance of doubt, includes any trade mark licence agreement between a Franchisee and an API Group Member.

Franchise Regulator means the Pharmacy Council of New South Wales, Victorian Pharmacy Authority, Pharmacy Business Ownership team (Queensland Health), Pharmacy Regulation Authority South Australia, Pharmacy Registration Board of WA, Tasmanian Pharmacy Authority, Pharmaceutical Services section of the Health Protection Service (ACT) and the Pharmacy Premises Committee (NT).

Franchisee means any person who is or was, or is proposed to be, a party to a Franchise Agreement with any API Group Member.

Franchisee Claims means:

- (a) any counterclaim filed in response to Australian Pharmaceutical Industries Limited and Ors v Christopher Ian Lemon and Anor (case number S ECI 2021 01012);
- (b) Ranya Youseff and others v Australian Pharmaceutical Industries Limited and others (case number S ECI 2021 03706) (**Specified Proceedings**); and
- (c) any actual class action or class actions of the same or a similar nature to the Specified Proceedings.

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the ACCC, ASIC, ATO, ASX, the New Zealand Inland Revenue Department, any Office of State Revenue, the Takeovers Panel, any Franchise Regulator and any self-regulatory organisation established under statute or by ASX.

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

GST Law means the same as "GST law" in the GST Act.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme is passed by a majority in number of each class of API Shareholders present and voting, either in person or by proxy at the Scheme Meeting.

Implementation Date means the day which is five Business Days after the Scheme Record Date, or such other date as ordered by the Court or agreed in writing between API and Wesfarmers Sub.

Impugned Amount means all or any part of the payment required to be made under clause 12.2 or 12.3 (as the case may be) that is found by the Takeovers Panel or a court to:

- (a) be unlawful;
- (b) involve a breach of directors' duties; or
- (c) constitute Unacceptable Circumstances,

provided that no party made or caused or permitted to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to above and all proper avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part of such payment that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid.

Independent Expert means the independent expert appointed by API in respect of the Scheme.

Independent Expert's Report means a report prepared by the Independent Expert in accordance with ASIC Regulatory Guide 111 *Content of expert reports* in connection with the Scheme.

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;

- (b) a controller or analogous person being appointed to the person or any of the person's property;
- (c) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (d) an appointment of the kind referred to in paragraph (c) being made (whether or not following a resolution or application);
- (e) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (f) an application being made to a court for an order for its winding up;
- (g) an order being made, or the person passing a resolution, for its winding up;
- (h) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (i) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (j) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (k) any analogous event under the laws of any applicable jurisdiction.

Loss includes any loss, damage, liability, obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent, but excluding any consequential or indirect loss, economic loss or loss of profits.

LTIP means the long term incentive plan operated by API.

Marsden Park DC Lease means the lease agreement between API and Ganian Pty Limited in respect of Sydney Business Park, Hollinsworth Road, Marsden Park NSW 2765 (Lot 5 in DP 1210172 and Lot 36 in DP 262886).

Matching Period has the meaning given in clause 11.2.

Matching Right Notice means a notice given in accordance with clause 11.2(a) setting out all material details of an actual, proposed or potential Competing Proposal, including, without limitation, the identity of the relevant person making the actual, proposed or potential Competing Proposal, the consideration offered or proposed (including price and form of consideration), all material terms and conditions (which, for the avoidance of doubt, will include conditions precedent, termination events and proposed deal protection arrangements), proposed timing of the Competing Proposal that the API Board has determined is a Superior Proposal and all information the relevant proposal provides regarding the funding of the Competing Proposal, in each case to the extent known by API.

Material Adverse Change means an event or circumstance that occurs, is announced or becomes known to Wesfarmers Sub after the date of this document which, either individually or when aggregated with all such events or circumstances that have occurred, has had the effect of, or is reasonably likely to have the effect of:

- (a) diminishing the consolidated net assets of the API Group, taken as a whole, (calculated in accordance with the accounting policies and practices applied by API as at the date of this document) by an amount of at least \$60,000,000; or
- (b) diminishing the consolidated EBITDA by an amount of at least \$15,000,000 (and for this purpose, the full financial year effect of any resulting EBITDA diminution must be applied),

other than any event or circumstance:

- (c) required or expressly permitted by this document, the Scheme or the transactions contemplated by either;
- (d) that is Fairly Disclosed in the API Due Diligence Information (other than any event or circumstance in connection with the Franchisee Claims that Wesfarmers Sub is notified of under clause 5.2(c)(iv));
- (e) that is disclosed in the Public Register Information;
- (f) that is within the knowledge of Wesfarmers Sub as at the date of this document;
- (g) consented to in writing by Wesfarmers Sub;
- (h) comprising a change to legislation or regulation, any judicial or administrative interpretation of the law or any practice or policy of a Government Agency (whether or not retrospective in effect), including in relation to Tax, provided that such changes do not have a materially disproportionate effect on API relative to other participants in its industry;
- (i) arising from general changes in economic, political or business conditions (including interest rates, commodity prices and exchange rates), or in securities, credit or financial markets including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, and acts of terrorism, war (whether or not declared), natural disaster or the like, provided that such changes do not have a materially disproportionate effect on API relative to other participants in its industry;
- (j) arising directly or indirectly from COVID-19 or any COVID-19 Measures or other infectious or contagious disease, including the outbreak, escalation or impact of, or recovery from, the disease, including as a result of preventing, identifying, treating, lockdowns, travel restrictions, social distancing, vaccination programs, requirement or restrictions and other obligations on healthcare providers; or
- (k) arising out of the announcement of the Scheme (including any loss of or adverse change in the relationship of API or other API Group Members with any Government Agency or their respective Franchisees, employees, customers, partners, creditors, suppliers or contractual counterparties as at the date of this document, including the loss of any contract).

Material Authorisation means any Authorisation held by an API Group Member at the date of this document, which, if that Authorisation had been revoked or terminated:

- For personal use only
- (a) would have materially adversely impacted the ability of any API Group Member to conduct its business in substantially the same manner and at the same locations as conducted in the six months preceding the date of this document; or
 - (b) would materially adversely impact the ability of any API Group Member to perform its obligations (including, but not limited to, the obligations under this document) at any time after the date of this document.

Material Contracts means:

- (a) the Pfizer Agreements;
- (b) the Arrotex Agreements;
- (c) the CSO Deed;
- (d) the Marsden Park DC Lease;
- (e) the Wingfield DC Lease;
- (f) the Boots Agreement; and
- (g) the Australia Post Agreement.

Notifications has the meaning given in clause 6.4(b)(i)(B).

Option Letter means the letter agreement between Wesfarmers and WHSP entitled "Australian Pharmaceutical Industries Limited – Undertaking" dated 9 July 2021, as disclosed in a Form 603 dated 12 July 2021 provided to API and lodged with ASX by Wesfarmers.

Order has the meaning given in clause 3.10.

Permitted Dividend means:

- (a) a final dividend in respect of the financial year ended 31 August 2021; and
- (b) any other dividend,

declared or determined by API and paid by API to API Shareholders in accordance with clause 4.6(b), provided that the maximum aggregate amount paid or payable by API per API Share in respect of all such dividends is \$0.05 per API Share.

Pfizer Agreements means:

- (a) the terms and conditions of purchase between API Services Australia Pty Ltd and Pfizer Australia Pty Ltd dated June 2021; and
- (b) the confidential trading agreement between API Services Australia Pty Ltd and Pfizer Australia Pty Ltd dated 1 May 2021.

Pharmacy Platform MOU means the memorandum of understanding agreement between Pharmacy Platform Pty Limited and API commencing on 1 June 2021.

PPS Register means the register established under the PPSA.

PPS Security Interest means a security interest that is subject to the PPSA.

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

Protocols means the communication protocols agreed between API and Wesfarmers Sub, as they may be amended or supplemented by agreement between API and Wesfarmers Sub.

Public Register Information means the following information:

- (a) any announcements made by API to ASX in the one year period prior to the date of this document;
- (b) the records lodged with ASIC in the one year period prior to the date of this document and which are revealed on electronic searches under a person's name, ACN or ABN (had the relevant searches been conducted prior to the date of this document);
- (c) the records made available for public inspection on a register maintained by the High Court of Australia, the Federal Court of Australia, the Federal Circuit Court of Australia or the Supreme Courts in each state or territory of Australia on 23 September 2021 in respect of the API Specified Entities; and
- (d) the public records maintained by:
 - (i) the ACCC (had the relevant searches been conducted prior to the date of this document);
 - (ii) the PPS Register (had the relevant searches been conducted prior to the date of this document); and
 - (iii) IP Australia (had the relevant searches been conducted 10 Business Days prior to the date of this document),

in the case of paragraphs (a), (b) and (d) of this definition, in respect of API and any other API Group Member.

Recommendation has the meaning given in clause 4.2(a)(i).

Register means the register of members of API maintained by API or the Registry in accordance with the Corporations Act.

Registry means Boardroom Pty Limited (ACN 003 209 836).

Regulatory Approvals means:

- (a) any approval, consent, waiver, exemption or declaration from a Government Agency that is necessary, required by law, or which API and Wesfarmers Sub agree (acting reasonably) is desirable, to implement the Scheme, including (without limitation) any relief, waiver, confirmation, exemption or consent granted by ASX or ASIC required to implement the Scheme substantially on the terms of this document and the Scheme; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action,

and includes:

- (c) the consents, approvals, clearances, decisions and determinations referred to in the Condition in item 1 of clause 3.2.

Related Entity means in relation to an entity (the **first entity**):

- (a) a Controlled entity of the first entity;
- (b) an entity of which the first entity is a Controlled entity; or
- (c) a Controlled entity of another entity of which the first entity is also a Controlled entity.

Relevant Condition has the meaning given in clause 3.4(b).

Representation and Warranty means a Wesfarmers Sub and Wesfarmers Representation and Warranty or an API Representation and Warranty (as applicable).

Representatives means, in relation to an entity:

- (a) each of the Related Entities; and
- (b) each of the directors, officers, employees, agents, consultants, contractors, representatives and Advisers of the entity or any of its Related Entities.

RG 60 means Regulatory Guide 60 *Schemes of arrangement* issued by ASIC on 22 September 2011.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between API and Scheme Shareholders in the form, or substantially in the form, of Schedule 2 or in such other form as is agreed in writing between API and Wesfarmers Sub, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing between API and Wesfarmers Sub.

Scheme Booklet means the information memorandum in respect of the Scheme to be prepared by API (other than the Wesfarmers Material, which is to be prepared by Wesfarmers Sub) in accordance with the terms of this document, approved by the Court and dispatched to API Shareholders, and that includes or is accompanied by:

- (a) the API Material;
- (b) the Wesfarmers Material;
- (c) the Scheme;
- (d) an explanatory statement (as that term is defined in section 412 of the Corporations Act);
- (e) a copy of the Independent Expert's Report;
- (f) a copy or summary of the terms of this document;
- (g) a copy of the Deed Poll executed by Wesfarmers Sub and Wesfarmers; and
- (h) the notice convening the Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting.

Scheme Consideration means the consideration to be provided by Wesfarmers Sub to each Scheme Shareholder (other than each Excluded Shareholder) for the transfer to Wesfarmers Sub of each Scheme Share, being \$1.55 cash for each API Share held by a Scheme Shareholder (other than each Excluded Shareholder) as at the Scheme Record Date, subject to and as adjusted in accordance with clause 2.3(c) (if applicable).

Scheme Meeting means the meeting of API Shareholders to be convened, as ordered by the Court under section 411(1) of the Corporations Act, to consider the Scheme and includes any adjournment or postponement of that meeting.

Scheme Record Date means 7.00 pm on the day which is five Business Days after the Effective Date, or such other date (after the Effective Date) agreed between the parties to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Scheme Share means an API Share on issue as at the Scheme Record Date.

Scheme Shareholder means an API Shareholder recorded in the Register as at the Scheme Record Date.

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

Security Interest means any security interest, including:

- (a) a PPS Security Interest;
- (b) any other mortgage, charge, pledge or lien; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Senior Executives means the members of API's Executive Leadership Team.

Sisu Agreement means the shareholders agreement between Duncan Elite Physiology Pty Ltd as trustee for the M & N Duncan Family Trust, Bootstrapper Pty Ltd as trustee for the Duncan Family Trust, KRIT Pty Ltd as trustee for the Kirk Road Investment Trust, Agnes Investments Pty Ltd as trustee for the Agnes Unit Trust, API and Sisu Wellness Pty Ltd dated 8 July 2020.

Specified Proceedings has the meaning given in paragraph (b) of the definition of Franchisee Claims.

STIP means the short term incentive plan operated by API.

Superior Proposal means a bona fide written Competing Proposal which the API Board, acting in good faith and after taking advice from API's financial and legal advisers determines:

- (a) is reasonably capable of being valued, implemented and completed in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to API Shareholders, taken as a whole, than the implementation of the Scheme,

in each case, taking into account all aspects (including all of the terms and conditions) of the Competing Proposal, including:

- (c) the conditions associated with the Competing Proposal, including any shareholder approval requirements of the person making the Competing Proposal;
- (d) any respective requirement for all or part of the acquisition consideration payable to API Shareholders being other than cash, and, if so, the respective nature, attributes and liquidity of such non-cash consideration and the risks associated with such non-cash consideration; and
- (e) the identity, reputation and financial condition of the person making the Competing Proposal as compared to Wesfarmers, and the funding proposed by the person making the Competing Proposal to effect such Competing Proposal.

TAA means the *Taxation Administration Act 1953* (Cth).

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above.

Terminating Party has the meaning given in clause 13.1.

Third Party means a person other than a Wesfarmers Group Member, API Group Member or their respective Associates.

Third Party Confidentiality Agreement means an agreement or deed between an API Group Member and a Third Party or any deed poll in favour of an API Group Member, pursuant to which API provides non-public information relating to the API Group to the Third Party.

Timetable means the indicative timetable for the implementation of the Scheme agreed in writing between the parties.

Trading Day has the meaning given in the ASX Listing Rules.

Unacceptable Circumstances has the meaning given to that term in section 657A of the Corporations Act.

Valid Variation Notice means a Variation Notice, which contains:

- (a) the name of each API Shareholder, referred to in clause 2.5(a), which matches the name of the same API Shareholder on the Registry; and
- (b) an expiry date which is on or after the date Wesfarmers Sub becomes the owner of the API Shares referred to in clause 2.5(a).

Variation Notice means a notice of variation granted by the Commissioner under subsection 14-235(2) of Schedule 1 to the TAA.

Voting Intention has the meaning given in clause 4.2(a)(ii).

Wesfarmers Agreed Representatives means the list of agents, consultants and contractors of Wesfarmers Sub or Wesfarmers agreed, on the date of this document, between API and Wesfarmers Sub for the purposes of this document, and such other persons as API and Wesfarmers Sub may agree after the date of this document.

Wesfarmers Break Fee means \$7,738,000 (exclusive of GST).

Wesfarmers Group means Wesfarmers and its subsidiaries, and **Wesfarmers Group Member** means Wesfarmers or any of its subsidiaries.

Wesfarmers Indemnified Party means:

- (a) each Wesfarmers Group Member; and
- (b) any person who was a director, officer or employee of a Wesfarmers Group Member at any time prior to the Implementation Date.

Wesfarmers Material means information provided by Wesfarmers for inclusion in the Scheme Booklet, including:

- (a) information regarding:
 - (i) the Wesfarmers Group;
 - (ii) the businesses of the Wesfarmers Group;
 - (iii) the Wesfarmers Group's interests and dealings in API Shares;
 - (iv) the Wesfarmers Group's intentions in relation to API's business, assets and employees; and
 - (v) the arrangements the Wesfarmers Group has in place to fund the Scheme; and
- (b) any other information as is required by applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules,

other than the API Material and the Independent Expert's Report.

Wesfarmers Sub and Wesfarmers Representation and Warranty means a representation and warranty given or made by Wesfarmers Sub and Wesfarmers in clause 14.1 or 14.3.

Wesfarmers Sub Board means the board of directors of Wesfarmers Sub as at the Implementation Date.

WHSP means Washington H. Soul Pattinson and Company Limited (ACN 000 002 728).

Wingfield DC Lease means the lease agreement between API and Confoto Pty Ltd in respect of 362 Cormack Road, Wingfield SA 5013 (Volume 5230 Folio 396) dated 4 June 2004.

Withholding Amount means the amount that Wesfarmers Sub is required to pay to the Commissioner under Subdivision 14-D of Schedule 1 of the TAA in respect of the acquisition of any API Shares from an API Shareholder (other than an Excluded Shareholder).

Withholding Declaration means a declaration under section 14-225 of Schedule 1 to the TAA in respect of the acquisition of any API Shares from an API Shareholder (other than an Excluded Shareholder).

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **controller**, **entity**, **officer**, **security interest** and **subsidiary** have the same meanings as given by the Corporations Act.
- (g) A reference to **\$** or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) A reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:
 - (i) in respect of Wesfarmers Sub, the chief executive officer, chief financial officer, company secretary or managing director – business development of Wesfarmers having actual knowledge or awareness of that information at the relevant time; and

- (ii) in respect of API, the chief executive officer, chief financial officer or company secretary of API having actual knowledge or awareness of that information at the relevant time,

or, for either party (as applicable), information that those persons would have discovered by making reasonable enquiries in the circumstances.

- (j) Terms defined in the GST Law have the same meaning in this document unless the context otherwise requires.
- (k) A reference to time in this document is a reference to time in Melbourne, Victoria.
- (l) A reference to something being "reasonably likely" (or a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the next Business Day.

2. **SCHEME STRUCTURE**

2.1 **Agreement to propose and implement Scheme**

- (a) API agrees to propose the Scheme to API Shareholders 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 all reasonable endeavours to do so in accordance with the Timetable.
- (b) Wesfarmers Sub agrees to assist API 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 all reasonable endeavours to do so in accordance with the Timetable.

2.2 **No amendments to Scheme without consent**

API must not consent to:

- (a) any modification of;
- (b) any amendment to; or
- (c) the making or imposition by the Court of any condition in respect of,

the Scheme, without the prior written consent of Wesfarmers Sub.

2.3 **Scheme Consideration**

- (a) Each Scheme Shareholder (other than each Excluded Shareholder) is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this document and the Scheme.
- (b) Subject to the Scheme becoming Effective, Wesfarmers Sub undertakes and warrants to API (in its own right and separately as trustee or nominee for each of the Scheme Shareholders other than the Excluded Shareholders) that, in consideration for the transfer to Wesfarmers Sub of each Scheme Share held by a Scheme Shareholder (other than Scheme Shares held by Wesfarmers Sub) under the terms of the Scheme, Wesfarmers Sub will, subject to the terms of this document, the Deed Poll and the Scheme:

- (i) accept that transfer; and
 - (ii) provide the Scheme Consideration to each Scheme Shareholder.
- (c) The Scheme Consideration will be reduced by the cash amount of any Permitted Dividend, but will not be reduced by the value attributed to any franking credits attached to any Permitted Dividend.

2.4 **Wesfarmers guarantee**

- (a) Wesfarmers unconditionally and irrevocably:
- (i) guarantees to API the due and punctual performance by Wesfarmers Sub of the Wesfarmers Sub obligations under this document, the Deed Poll and the Corporations Act; and
 - (ii) indemnifies API, on demand, against all losses incurred by API arising from any default or delay in the performance of such obligations.
- (b) The obligation of Wesfarmers under this clause 2.4 is a principal and continuing obligation and remains in full force and effect until all obligations of Wesfarmers Sub have been fully discharged.
- (c) The liability of Wesfarmers under clause 2.4(a) is not affected by anything which, but for this clause 2.4, might operate to release or exonerate Wesfarmers in whole or in part from its obligations.

2.5 **Withholding**

- (a) If Wesfarmers Sub determines (acting reasonably) that it must pay an amount to the Commissioner under Subdivision 14-D of Schedule 1 to the TAA in relation to the acquisition of any API Shares from an API Shareholder (other than each Excluded Shareholder), Wesfarmers Sub will:
- (i) determine the Withholding Amount to be paid to the Commissioner in respect of the acquisition of the API Shares from such API Shareholder;
 - (ii) notify API of the Withholding Amount in respect of the acquisition of API Shares from such API Shareholder;
 - (iii) pay the Withholding Amount to the Commissioner within the timeframe required under the TAA; and
 - (iv) if requested in writing by the relevant API Shareholder, provide a receipt or other appropriate evidence of payment of the Withholding Amount to the Commissioner (or procure the provision of such receipt or other evidence) to the relevant API Shareholder.
- (b) API agrees that Wesfarmers Sub may approach the ATO to obtain clarification as to the application of the CGT Withholding Law to the Scheme and will provide such information and assistance that Wesfarmers Sub reasonably requires in making that approach.
- (c) The parties agree to:
- (i) consult in good faith as to the application of the CGT Withholding Law to the Scheme; and

- (ii) use reasonable endeavours to take all actions that are necessary or desirable in relation to the CGT Withholding Law, which may include, without limitation, promptly communicating to any API Shareholder to obtain a Valid Variation Notice or Withholding Declaration contemplated by the CGT Withholding Law so as to reduce or eliminate the Withholding Amount payable to the Commissioner in respect of any API Shareholder.

3. **CONDITIONS**

3.1 **Obligations not binding until Conditions satisfied**

The Scheme will not become effective and the obligations of the parties with respect to implementation of the Scheme (including the obligations of Wesfarmers Sub under clauses 2.3 and 4.3(n)) do not become binding unless and until each Condition is satisfied or waived under clause 3.3.

3.2 **Conditions**

The Conditions are as follows:

CONDITION	PARTY ENTITLED TO BENEFIT	PARTY RESPONSIBLE
<p>1. Regulatory Approvals</p> <p>Before 8.00 am on the Approval Date:</p> <p>(a) ACCC: API and Wesfarmers Sub have received written notice from the ACCC stating, or stating to the effect, either unconditionally or on conditions that are acceptable to Wesfarmers Sub (in its absolute discretion), that the ACCC does not propose to intervene or seek to prevent the acquisition of Scheme Shares by Wesfarmers Sub and that notice remains in full force and effect in all respects and has not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before 8.00 am on the Approval Date; and</p> <p>(b) other: Wesfarmers Sub obtains from any relevant Government Agencies such other regulatory approvals, consents, waivers, exemptions or declarations that the parties agree (acting reasonably) are necessary to implement the Scheme, either unconditionally or on conditions that are acceptable to both parties (acting reasonably), and those regulatory approvals, consents, waivers, exemptions or declarations have not been withdrawn, cancelled or revoked before 8.00 am on the Approval Date.</p>	<p>Wesfarmers Sub</p>	<p>Wesfarmers Sub</p>

CONDITION	PARTY ENTITLED TO BENEFIT	PARTY RESPONSIBLE
<p>2. API Shareholder Approval</p> <p>Before 8.00 am on the Second Court Date, API Shareholder Approval is obtained at the Scheme Meeting (or any adjournment or postponement of it) convened in accordance with the orders made under section 411(1) of the Corporations Act.</p>	<p>API and Wesfarmers Sub, but cannot be waived</p>	<p>API</p>
<p>3. Court approval of Scheme</p> <p>The Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme.</p>	<p>API and Wesfarmers Sub, but cannot be waived</p>	<p>API</p>
<p>4. No regulatory actions</p> <p>At 8.00 am on the Second Court Date, there is not in effect:</p> <p>(a) any temporary, preliminary or final decision, order, injunction or decree issued by a court of competent jurisdiction or other Government Agency; or</p> <p>(b) any action or investigation by any Government Agency,</p> <p>and no application has been made to any Government Agency (or could reasonably be expected to be made), in each case, to restrain, prohibit or impede the implementation of the Scheme (including the acquisition of any or all of the Scheme Shares by Wesfarmers Sub) or any part of it.</p>	<p>API and Wesfarmers Sub</p>	<p>API and Wesfarmers Sub</p>
<p>5. No Material Adverse Change</p> <p>No Material Adverse Change occurs between the date of this document and 8.00 am on the Second Court Date.</p>	<p>Wesfarmers Sub</p>	<p>API</p>
<p>6. No API Prescribed Event</p> <p>No API Prescribed Event occurs between the date of this document and 8.00 am on the Second Court Date.</p>	<p>Wesfarmers Sub</p>	<p>API</p>
<p>7. API Representations and Warranties</p> <p>Each API Representation and Warranty is true and correct as at the time or times it is given or made.</p>	<p>Wesfarmers Sub</p>	<p>API</p>

CONDITION	PARTY ENTITLED TO BENEFIT	PARTY RESPONSIBLE
<p>8. Independent Expert's Report</p> <p>The Independent Expert:</p> <p>(a) issues the Independent Expert's Report, which concludes that the Scheme is in the best interests of API Shareholders; and</p> <p>(b) does not withdraw or qualify its conclusion in any written update to its Independent Expert's Report or withdraw the Independent Expert's Report,</p> <p>prior to 8.00 am on the Second Court Date.</p>	API	API
<p>9. Wesfarmers Sub and Wesfarmers Representations and Warranties</p> <p>Each Wesfarmers Sub and Wesfarmers Representation and Warranty is true and correct as at the time or times it is given or made.</p>	API	Wesfarmers Sub and Wesfarmers

3.3 Waiver of Conditions

- (a) To avoid any doubt, the Conditions that the table in clause 3.2 specifies "cannot be waived", cannot be waived.
- (b) Subject to clause 3.3(a), if a Condition has been included for the benefit of:
 - (i) one party only, only that party may (in its sole and absolute discretion), waive the breach or non-fulfilment of the Condition; or
 - (ii) more than one party, the breach or non-fulfilment of the Condition may be waived only by the agreement of all those parties (in their sole and absolute discretion).
- (c) The breach or non-fulfilment of a Condition may only be waived in writing.
- (d) If a party waives the breach or non-fulfilment of a Condition, that waiver precludes the party from suing another party for any breach of this document that resulted in the breach or non-fulfilment of the Condition.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

3.4 Satisfaction of Conditions

- (a) Each party must:
 - (i) use reasonable endeavours (other than waiver) to ensure and procure that each Condition for which that party is responsible (according to the table in

clause 3.2, and whether solely or jointly) is satisfied as soon as practicable after the date of this document and continues to be satisfied;

- (ii) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions; and
 - (iii) not take any action or refrain from taking any action (except as required by law) designed to prevent or hinder the satisfaction of the Conditions, without the prior consent of the other party.
- (b) Without limiting clause 3.4(a), with respect to any Regulatory Approvals that are necessary to implement the Scheme (and where expressly specified in item 1 (Regulatory Approvals) of clause 3.2) (**Relevant Condition**), API must:
- (i) cooperate with Wesfarmers Sub and promptly provide Wesfarmers Sub with all information and assistance that is reasonably required for Wesfarmers Sub to satisfy the Relevant Condition, in a manner that complies with relevant competition laws;
 - (ii) respond as soon as is reasonably practicable and in any event in accordance with any relevant time limit to any request for information from a Government Agency in relation to the Scheme or the satisfaction of a Relevant Condition, to the extent such information is within its possession or control;
 - (iii) promptly notify and provide Wesfarmers Sub with a copy of all material written communications from or between API and a Government Agency in connection with the satisfaction of any Relevant Condition;
 - (iv) so far as it is able, allow Wesfarmers Sub and a reasonable number of the Wesfarmers Agreed Representatives the opportunity to be present at any material meetings or material calls with any Government Agency in connection with the satisfaction of any Relevant Condition;
 - (v) provide Wesfarmers Sub with a draft of any material submission or material written communication with a Government Agency (which may be redacted in respect of any part of the document containing information that is confidential to API) in connection with the satisfaction of any Relevant Condition before such submission or written communication is provided to the relevant Government Agency, and take into account all comments received in a timely manner from Wesfarmers Sub or its Representatives; and
 - (vi) provide Wesfarmers Sub with a copy of any submission or written communication sent to a Government Agency (which may be redacted in respect of any part of the document containing information that is confidential to API) in connection with the satisfaction of any Relevant Condition,
- provided that:
- (vii) API may withhold or redact information or documents from Wesfarmers Sub if, and to the extent that, they are either confidential to a Third Party and/or commercially sensitive or confidential to a Third Party; and
 - (viii) API is not required to disclose commercially sensitive information to Wesfarmers Sub.
- (c) Without limiting clause 3.4(a) and except to the extent prohibited by a Government Agency, Wesfarmers Sub must:

- For personal use only
- (i) promptly identify and agree with API (acting reasonably) any Regulatory Approvals that are necessary to implement the Scheme (where not expressly specified in item 1 (Regulatory Approvals) of clause 3.2) and apply for all such Regulatory Approvals and provide API with a copy of all applications for Regulatory Approvals made by it;
 - (ii) take all steps it is responsible for as part of the Regulatory Approvals process;
 - (iii) (as far as practicable and permissible) take into account any reasonable comments received in a timely manner from API or its Representatives in advance in relation to all communications (whether written or oral, and whether direct or through an Adviser) with any Government Agency relating to any Regulatory Approval and, without limitation:
 - (A) provide API with drafts of any material written communications to be sent to a Government Agency and make such amendments as API reasonably requires; and
 - (B) provide copies of any written communications sent to or received from a Government Agency to API promptly upon dispatch or receipt (as the case may be);
 - (iv) respond to all requests for information in respect of the applications for Regulatory Approvals from a Government Agency in relation to the Scheme or the satisfaction of a Condition at the earliest practicable time, to the extent such information is within its possession or control;
 - (v) provide API with all information and assistance reasonably requested by API in connection with the applications for Regulatory Approvals;
 - (vi) to the extent that it is within its control, use its reasonable endeavours to procure that there is no occurrence that would prevent the Regulatory Approvals from being obtained by the applicable time referred to in the Condition in item 1 (Regulatory Approvals) of clause 3.2 and not take any action that will or is likely to hinder or prevent the satisfaction of that Condition except to the extent that such action is required by law; and
 - (vii) so far as it is able, allow API and a reasonable number of its authorised Representatives the opportunity to be present and make submissions at any meetings with any Government Agency relating to the Regulatory Approvals,
- provided that:
- (viii) Wesfarmers Sub may withhold or redact information or documents from API if, and to the extent that, they are either confidential to a Third Party and/or commercially sensitive or confidential to a Third Party; and
 - (ix) Wesfarmers Sub is not required to disclose commercially sensitive information to API.

3.5 Notifications

- (a) If a party becomes aware of:
 - (i) the satisfaction of a Condition or of any material progress towards such satisfaction; or
 - (ii) any event, occurrence or circumstance which has resulted, or may result, in any of the Conditions not being satisfied in accordance with its terms,

it must promptly give the other party written notice, as soon as reasonably practicable (and in any event within two Business Days of the event, occurrence or circumstance referred to in clause 3.5(a)(i) or 3.5(a)(ii) occurring (as applicable)). For the avoidance of doubt, multiple notices may be required under this clause 3.5.

- (b) Each of API and Wesfarmers Sub must promptly advise the other party, in writing, of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause a breach or non-satisfaction of any of the Conditions.

3.6 **If a Condition is not fulfilled or waived**

If:

- (a) **(Condition not satisfied or waived)** any Condition is not satisfied or (where capable of waiver) waived by the time or date specified in this document for its satisfaction;
- (b) **(Condition not capable of being satisfied)** for any reason, a Condition is not capable of being satisfied, or an event, occurrence or circumstance occurs which is reasonably likely to result in a Condition not being capable of being satisfied, and the Condition has not for the time being been waived in accordance with clause 3.3 or cannot be waived; or
- (c) **(Scheme not Effective)** the Scheme does not become Effective by 11.59 pm on the End Date,

then either party must promptly give the other party written notice requiring the parties to consult in good faith for a period of five Business Days to determine whether to:

- (d) proceed by way of alternative means or method so as to achieve a commercial outcome that is substantially the same as the Scheme;
- (e) extend the relevant time or date for satisfaction of a particular Condition or Conditions;
- (f) change the time or date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another time or date agreed between the parties;
- (g) extend the End Date; or
- (h) do any combination of the matters listed in clauses 3.6(d) to 3.6(g) (inclusive).

3.7 **Failure to agree**

- (a) Subject to clauses 3.7(b) and 3.10, if the parties are unable to reach agreement under clause 3.6 by the earlier of:
 - (i) five Business Days after delivery of the notice under clause 3.6; or
 - (ii) 5.00 pm on the Business Day before the Second Court Date,

then, unless the relevant Condition has been waived in accordance with clause 3.3, any party entitled to the benefit of the relevant Condition may terminate this document in accordance with clause 13.1.

- (b) A party may not terminate this document pursuant clause 3.7(a) if the failure of the Condition, the relevant event, occurrence or circumstance, or the failure of the

Scheme to become Effective arises out of a breach of clauses 3.4 or 3.5 by that party, although in such circumstances any other party entitled to the benefit of the relevant Condition may still terminate this document in accordance with clause 13.1.

3.8 **Parties to provide certificate to Court**

- (a) Before 8.00 am on the Second Court Date, each party must provide:
 - (i) to the other party and to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court requests), confirming whether or not the Conditions set out in clause 3.2 included for its benefit (whether solely or jointly), other than the Condition in item 3 of clause 3.2, have been satisfied or waived in accordance with this document; and
 - (ii) to the other party a certificate signed by a duly authorised representative stating whether or not:
 - (A) it has breached any of its obligations under this document; and
 - (B) each of the Representations and Warranties given or made by it is true and accurate as at the time or times it is given or made.
- (b) A certificate provided under clause 3.8(a) constitutes conclusive evidence that the relevant Conditions have been fulfilled, waived or taken to be waived.

3.9 **Court approval**

If the Court's approval of the Scheme in accordance with section 411(4) of the Corporations Act would impose any terms or conditions other than those set out in the Scheme, then each such term or condition must be approved in writing between API and Wesfarmers Sub (both acting reasonably) prior to the Court granting the final orders and, if not so agreed, the Condition in item 3 (Court approval of Scheme) of clause 3.2 will not be satisfied.

3.10 **Scheme voted down**

If API Shareholder Approval is not obtained at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and it appears to either party (acting reasonably) that there are reasonable grounds on which an application could be made to the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test (**Order**), that party may give written notice to the other within three Business Days after the Scheme Meeting setting out those grounds, and if such notice is given:

- (a) API must, promptly after such notice is given, apply to Court for the Order by making such submissions to the Court and filing such evidence as counsel engaged by API to represent it in Court proceedings related to the Scheme, in consultation with Wesfarmers Sub, considers is reasonably required to persuade the Court to exercise its discretion; and
- (b) the cost of the application for the Order is to be borne equally between the parties.

If the Order is given, the Condition in item 2 (API Shareholder Approval) of clause 3.2 is deemed to be satisfied for all purposes.

4. IMPLEMENTATION OBLIGATIONS

4.1 Timetable

- (a) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 4.2 (by API) or clause 4.3 (by Wesfarmers Sub) to the extent that such failure is due to circumstances and matters outside the party's control.
- (b) Each party must keep the other informed about its progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are unachievable.
- (c) To the extent that any of the dates or timeframes set out in the Timetable become unachievable due to circumstances or matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest practicable timeframe.

4.2 API obligations

API must take all necessary steps to propose and implement the Scheme as soon as practicable and use its reasonable endeavours to do so in accordance with the Timetable and, without limiting the foregoing, do each of the following:

- (a) **(Recommendation and Voting Intention)** make an Announcement in Agreed Form which includes a statement (on the basis of written statements made to it by each of its directors) that:
 - (i) the API directors unanimously recommend that API Shareholders (other than the Excluded Shareholders) vote in favour of the Scheme at the Scheme Meeting (**Recommendation**); and
 - (ii) each API director who holds API Shares intends to vote his or her API Shares in favour of the Scheme at the Scheme Meeting (**Voting Intention**),in each case, subject only to:
 - (iii) no Superior Proposal being announced; and
 - (iv) the Independent Expert concluding (and continuing to conclude at all times prior to the Second Court Date) that the Scheme is in the best interests of API Shareholders;
- (b) **(change to Recommendation or Voting Intention)** use reasonable endeavours to procure that no API director adversely changes, qualifies or withdraws the Recommendation or Voting Intention or makes any public statement or any statement to brokers, analysts, journalists, API Shareholders or professional or institutional investors, or take any other action, that is inconsistent with that Recommendation or Voting Intention until the Implementation Date, subject to:
 - (i) the API Board or an API director determining, acting in good faith and after receiving advice from API's legal advisers, that maintaining the Recommendation or Voting Intention would be likely to breach the directors' fiduciary or statutory obligations;
 - (ii) API having entered into a legally binding document to give effect to a Superior Proposal;

- (iii) the Independent Expert concluding (either in its initial Independent Expert's Report or in any written update, revision, amendment, addendum or supplementary reports to it) that the Scheme is not in the best interests of API Shareholders, or the Independent Expert withdrawing its Independent Expert's Report prior to 5.00 pm on the day before the Second Court Date; or
- (iv) the change, qualification or withdrawal occurs because of a requirement or request by a court or Government Agency that the relevant director abstains from making the Recommendation or Voting Intention,

provided that:

- (v) a statement made by the API Board to the effect that no action should be taken by API Shareholders pending the assessment of a Competing Proposal by the API Board or the completion of the matching right process set out in clause 11.2 does not constitute a change, qualification or withdrawal of the Recommendation or Voting Intention;
 - (vi) API must promptly issue an announcement correcting any material inaccurate assertion in a public statement by a Third Party in respect of the Recommendation or Voting Intention (provided that API is aware of such assertion); and
 - (vii) in each case, API has complied with its obligations under clause 10 (where applicable);
- (c) **(Scheme Booklet):**
- (i) as soon as practicable after the date of this document, prepare the Scheme Booklet in accordance with this clause 4.2(c) and clause 4.4;
 - (ii) provide Wesfarmers Sub with successive drafts of the Scheme Booklet for review in a timely manner;
 - (iii) provide Wesfarmers Sub with an advanced draft of the Scheme Booklet within a reasonable time before providing it to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
 - (iv) consider in good faith, for the purpose of amending those drafts, any reasonable comments from Wesfarmers Sub on those drafts; and
 - (v) obtain approval from Wesfarmers Sub for the form and context in which the Wesfarmers Material appears in the Scheme Booklet, which approval must not be unreasonably withheld or delayed;
- (d) **(Independent Expert's Report):**
- (i) promptly appoint the Independent Expert and commission the preparation of the Independent Expert's Report; and
 - (ii) provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (e) **(review of the Independent Expert's Report)** on receipt from the Independent Expert of a draft of the Independent Expert's Report, provide Wesfarmers with such draft report (and any update to such draft report) for factual accuracy review and promptly give to the Independent Expert any comments that Wesfarmers provides regarding the Independent Expert's Report;

- (f) **(information)** provide all necessary information, and procure that the Registry provides all necessary information, in each case in a form reasonably requested by Wesfarmers Sub, about the Scheme, the Scheme Shareholders and API Shareholders to Wesfarmers Sub, which Wesfarmers Sub reasonably requires in order to:
- (i) understand the legal and beneficial ownership of API Shares (including the results of directions by API to API Shareholders under Part 6C.2 of the Corporations Act);
 - (ii) facilitate the provision by, or on behalf of, Wesfarmers Sub of the Scheme Consideration and to otherwise enable Wesfarmers Sub to comply with the terms of this document, the Scheme and the Deed Poll; or
 - (iii) review the tally of proxy appointments and directions received by API before the Scheme Meeting,
- and API must comply with any reasonable request of Wesfarmers Sub for API to give directions to API Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in clause 4.2(f)(i) or 4.2(f)(ii) above;
- (g) **(liaison with ASIC)** as soon as practicable (and in any event by no later than 14 days before the First Court Date):
- (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet, keep Wesfarmers Sub reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use its reasonable endeavours, in consultation with Wesfarmers Sub, to resolve any such matters;
- (h) **(ASIC no objection)** apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme;
- (i) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and:
- (i) provide Wesfarmers Sub with successive drafts of those documents for review in a timely manner;
 - (ii) provide Wesfarmers Sub with a reasonable opportunity to review and comment on those documents before they are filed with the Court; and
 - (iii) consider in good faith, for the purpose of amending drafts of those documents, any reasonable comments from the Wesfarmers Sub on those documents;
- (j) **(representation at Court proceedings)** procure that it is represented by counsel at all Court proceedings affecting the Scheme;
- (k) **(first Court hearing)** apply to the Court under section 411(1) of the Corporations Act for an order directing API to convene the Scheme Meeting;
- (l) **(register Scheme Booklet)** take all reasonable measures necessary to cause ASIC to register the Scheme Booklet under section 412(6) of the Corporations Act;

- For personal use only
- (m) **(dispatch Scheme Booklet)** as soon as practicable following an order made by the Court under section 411(1) of the Corporations Act, dispatch the Scheme Booklet to API Shareholders and all other persons entitled to receive notice of the Scheme Meeting;
 - (n) **(convene Scheme Meeting)** convene the Scheme Meeting in accordance with any order made by the Court under section 411(1) of the Corporations Act;
 - (o) **(promote merits of Scheme)** participate in efforts reasonably requested by Wesfarmers Sub to promote the merits of the Scheme, including meeting with key API Shareholders, employees of any API Group Members, Franchisees, the Australian Government Department of Health, the Pharmacy Guild of Australia or the Franchise Regulators, and provide Wesfarmers Sub with such information and assistance that Wesfarmers Sub reasonably requests to enable it to promote the merits of the Scheme;
 - (p) **(proxy solicitation)** in consultation with Wesfarmers Sub, undertake reasonable shareholder engagement and proxy solicitation actions so as to promote the merits of the Scheme and encourage API Shareholders to vote on the Scheme in accordance with the recommendation of the API Board, subject to applicable law and ASIC policy;
 - (q) **(continuing obligation of disclosure)** after the dispatch of the Scheme Booklet:
 - (i) subject to any order of the Court and applicable law, ensure that the Scheme Booklet (but in respect of the Wesfarmers Material, subject to Wesfarmers Sub complying with its obligations under clauses 4.3(a) and 4.3(b)) is updated by all such further or new information which may arise after the Scheme Booklet has been dispatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including because of any material omission) and otherwise complies with all applicable laws; and
 - (ii) to the extent it is reasonably practicable to do so, provide Wesfarmers Sub with drafts of any documents that it proposes to issue to API Shareholders under this clause 4.2(q) and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any reasonable comments received in a timely manner from Wesfarmers Sub or its Representatives on those drafts;
 - (r) **(second Court hearing)** if API Shareholder Approval is obtained under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.10 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act), apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
 - (s) **(certificates)** at the Second Court Date, provide the Court and Wesfarmers Sub with certificates in accordance with clause 3.8;
 - (t) **(appeal process)** if the Court refuses to make any orders directing API to dispatch the Scheme Booklet and convene the Scheme Meeting or approving the Scheme, API must:
 - (i) consult with Wesfarmers Sub in good faith as to whether to appeal the Court's decision; and
 - (ii) appeal the Court decision, unless API and Wesfarmers Sub agree otherwise or an independent senior counsel (appointed by both API and Wesfarmers Sub) opines that, in his or her view, an appeal would have no reasonable

prospect of success, with the costs of any such appeal to be borne equally by API and Wesfarmers Sub;

- (u) **(implementation of Scheme)** if the Scheme is approved by the Court:
- (i) as soon as practicable after the Court makes those orders, and in any event by no later than 4.00 pm on the Business Day after those orders are made, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) close the Register as at the Scheme Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Scheme Consideration, in accordance with the Scheme, and provide such information to Wesfarmers Sub;
 - (iii) subject to Wesfarmers Sub having provided the Scheme Consideration in accordance with the Scheme and the Deed Poll, execute proper instruments of transfer, and effect and register the transfer, of the Scheme Shares (excluding the Scheme Shares held by Wesfarmers Sub) to Wesfarmers Sub on the Implementation Date;
 - (iv) use its reasonable endeavours to ensure that ASX suspends trading in API Shares with effect from the close of trading on the Effective Date;
 - (v) subject to clause 4.2(u)(iv), use its reasonable endeavours to ensure that the API Shares continue to be quoted on ASX (even if suspended from trading) until the close of trading on the Implementation Date; and
 - (vi) do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme; and
- (v) **(removal from quotation)** if the Scheme becomes Effective, apply to ASX to have API removed from the official list of ASX, and quotation of API Shares on ASX terminated, with effect on and from the close of trading on the Trading Day immediately following the Implementation Date (unless otherwise directed by Wesfarmers Sub in writing).

4.3 **Wesfarmers' obligations**

Wesfarmers Sub must take, and Wesfarmers must ensure Wesfarmers Sub takes, all necessary steps to assist API to implement the Scheme as soon as practicable and use its reasonable endeavours to do so in accordance with the Timetable and, without limiting the foregoing, do each of the following:

- (a) **(Wesfarmers Material)** prepare, and promptly provide to API, the Wesfarmers Material for inclusion in the Scheme Booklet in accordance with all applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules, and clause 4.4;
- (b) **(keep API informed regarding Wesfarmers Material):**
 - (i) promptly inform API in writing if it becomes aware that the Wesfarmers Material (or any part of it) 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 (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules; and

- For personal use only
- (ii) as soon as practicable, give to API any further information reasonably required by API before the date of the Scheme Meeting to ensure that the Wesfarmers Material is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and complies with all applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules;
 - (c) **(Independent Expert's Report)** provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
 - (d) **(review of Scheme Booklet)** as soon as reasonably practicable after receiving them:
 - (i) review the drafts of the Scheme Booklet prepared by API and provide comments on those drafts (acting reasonably and in good faith); and
 - (ii) approve the form and context in which the Wesfarmers Material appears in those drafts (which approval must not be unreasonably withheld or delayed);
 - (e) **(assistance)** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to Third Parties and undertakings to Government Agencies, provide API and its Representatives with reasonable access during normal business hours to information and personnel of Wesfarmers Group that API reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Scheme;
 - (f) **(promote merits of Scheme)** consult with API before taking any action contemplated by clause 4.2(o) to promote the merits of the Scheme, including, without limitation, meeting with key API Shareholders, employees of any API Group Members, Franchisees, the Australian Government Department of Health, the Pharmacy Guild of Australia or the Franchise Regulators, and allow API and a reasonable number of its Representatives the opportunity to attend and participate in such efforts;
 - (g) **(approval of draft for ASIC)** as soon as reasonably practicable after receipt from API of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Wesfarmers Sub Board is held to consider approving the Wesfarmers Material contained in that draft as being in a form appropriate for provision to ASIC for review;
 - (h) **(liaison with ASIC)** provide reasonable assistance to API to assist it to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme during its review of the Scheme Booklet;
 - (i) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Wesfarmers Sub Board or a sub-committee thereof is held to consider approving the Wesfarmers Material contained in the Scheme Booklet as being in a form appropriate for dispatch to API Shareholders, subject to approval of the Court;
 - (j) **(Court documents)** as soon as reasonably practicable after receiving them, review the draft Court documents prepared by API and provide comments on those drafts (acting reasonably and in good faith);
 - (k) **(representation at Court proceedings)** procure that it is represented by counsel at all Court proceedings affecting the Scheme;

- (l) **(Deed Poll)** before the First Court Date, duly execute and enter into the Deed Poll and ensure that Wesfarmers duly executes and enters into the Deed Poll;
- (m) **(certificates)** at the Second Court Date, provide the Court and API with certificates in accordance with clause 3.8;
- (n) **(Scheme Consideration)** if the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration on the Implementation Date, in accordance with the Scheme and the Deed Poll;
- (o) **(share transfer)** if the Scheme becomes Effective:
- (i) accept a transfer of the Scheme Shares as contemplated by clause 2.3(b)(i); and
 - (ii) execute proper instruments of transfer in respect of the Scheme Shares;
- (p) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws and regulations; and
- (q) **(other things)** do all things reasonably within its power that are reasonably necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

4.4 **Scheme Booklet content and responsibility statements**

- (a) As soon as reasonably practicable after the date of this document and otherwise in accordance with the Timetable, API must prepare the Scheme Booklet and use its reasonable endeavours to ensure that the Scheme Booklet complies with:
- (i) the requirements of all applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules; and
 - (ii) this clause 4.4,
- except that the obligation to do so in respect of the Wesfarmers Material is subject to Wesfarmers Sub complying with its obligations under clauses 4.3(a) and 4.3(b), this clause 4.4 and clause 14.3(a).
- (b) API must undertake appropriate verification processes in relation to the API Material included in the Scheme Booklet.
- (c) Wesfarmers Sub must undertake appropriate verification processes in relation to the Wesfarmers Material included in the Scheme Booklet.
- (d) API and Wesfarmers Sub agree the Scheme Booklet must include a responsibility statement in a form to be agreed by the parties which will contain words to the effect that:
- (i) API has provided, and is responsible for, the API Material, and that Wesfarmers Sub does not assume any responsibility or liability for the accuracy or completeness of that information, but API does take responsibility and liability for that information; and
 - (ii) Wesfarmers Sub has provided, and is responsible for, the Wesfarmers Material, and that API does not assume any responsibility or liability for the

accuracy or completeness of that information, but Wesfarmers Sub does take responsibility and liability for that information.

- (e) If, after a reasonable period of consultation and compliance by API with its obligations under this clause 4, API and Wesfarmers Sub, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:
 - (i) where the determination relates to the form or content of the Wesfarmers Material (or any information solely derived from, or prepared solely in reliance on, the Wesfarmers Material), Wesfarmers Sub will make the final determination as to the form and content of the Wesfarmers Material; and
 - (ii) in any other case, API will, acting reasonably and in good faith, decide the final form and content of that information in the Scheme Booklet (provided that, if Wesfarmers Sub disagrees with such final form and content, API must include a statement to that effect in the Scheme Booklet).
- (f) API and Wesfarmers Sub each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of API Shareholders and Wesfarmers Sub and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external Advisers) to comply with their respective obligations under this clause 4 and to implement the Scheme as soon as reasonably practicable and otherwise substantially in accordance with the Timetable.

4.5 **Conduct of court proceedings**

- (a) API and Wesfarmers Sub are entitled to separate representation at all Court proceedings affecting the Scheme.
- (b) API and Wesfarmers Sub 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 document.

4.6 **Permitted Dividends**

- (a) Subject to clause 4.6(c), API may (in its absolute discretion) declare and pay a Permitted Dividend (and which may, at API's election but subject to clause 4.6(b), be partially or fully franked) to API Shareholders, provided that:
 - (i) API submits an application with the ATO for a class ruling from the ATO confirming that the Permitted Dividend can be partly or fully franked on terms that meet the requirements of this clause 4.6 (**Class Ruling**);
 - (ii) the record date for any such Permitted Dividend must be 7.00 pm (Melbourne time) on the day which is two Business Days before the Scheme Record Date, subject to the Scheme becoming Effective; and
 - (iii) the payment date for any such Permitted Dividend must be on or before the Implementation Date.
- (b) If API announces, declares or pays a Permitted Dividend:
 - (i) the Permitted Dividend may be franked to the maximum extent possible, subject to the franking account of API not being in deficit after the payment of the Permitted Dividend; and
 - (ii) the Permitted Dividend is to be paid from profits, retained earnings or distributable reserves (or a combination of all or some of them) of the API

Group existing prior to the declaration of such Permitted Dividend and otherwise in accordance with the Corporations Act.

- (c) API must:
 - (i) provide to Wesfarmers Sub a draft of any Class Ruling application contemplated by clause 4.6(a) within a reasonable time before submission with the ATO for the purpose of enabling Wesfarmers Sub to comment on the draft application; and
 - (ii) consider in good faith, for the purpose of amending the draft application, any reasonable comments from Wesfarmers Sub on that draft application.
- (d) Each party must provide the other party with such assistance and information as may reasonably be requested by the other party for the purposes of obtaining the Class Ruling contemplated by clause 4.6(a).

4.7 **API Performance Rights**

- (a) API must ensure that all API Performance Rights have either lapsed or vested and converted into API Shares such that there are no outstanding API Performance Rights on issue as at the Scheme Record Date.
- (b) In order to comply with its obligation under clause 4.7(a), API must:
 - (i) cause all of the unvested API Performance Rights to vest and, following such vesting, cause the relevant number of API Shares to be issued or transferred to each of the relevant former holders of API Performance Rights in sufficient time to allow the relevant former holders of the API Performance Rights to participate in the Schemes in respect of those API Shares;
 - (ii) make a cash payment to the relevant holders of API Performance Rights for an amount that does not exceed the Scheme Consideration for the number of API Shares to which those API Performance Rights relate, and ensure that all such API Performance Rights are cancelled prior to the Effective Date; or
 - (iii) take any action as may otherwise be necessary to cancel the API Performance Rights in respect of which Wesfarmers Sub consents in writing (such consent not to be unreasonably withheld or delayed).
- (c) For the avoidance of doubt, the parties agree that the exercise of any discretion by the API Board, or any other action, which is in accordance with this clause 4.7 will not be a Material Adverse Change, an API Prescribed Event, an API Regulated Event or a breach of any provision of this document, or give rise to any right to terminate this document, and will be disregarded when assessing the operation of any other part of this document.

5. **CONDUCT OF BUSINESS**

5.1 **Protocols**

API and Wesfarmers Sub acknowledge that they have entered into the Protocols, which set out principles and procedures that must be followed by API and Wesfarmers Sub in relation to their compliance with clause 5.2 and otherwise.

5.2 Specific obligations

Subject to clause 5.3 and the Protocols, during the period commencing on the date of this document and ending on the Implementation Date, and without limiting any other obligations of API under this document, API must:

- (a) conduct, and must procure that each API Group Member conducts its businesses in the ordinary course and operate those businesses consistent with past practice, in substantially the same manner as conducted on the date of this document, and to the extent consistent, use reasonable endeavours to:
 - (i) preserve its relationship with Franchisees, financiers, customers, suppliers, licensors, licensees, the Pharmacy Guild of Australia, Government Agencies and others having business dealings with it, and to retain the services of its key officers and employees;
 - (ii) comply in all material respects with all Material Contracts to which it is a party, and with laws and Authorisations applicable to it; and
 - (iii) maintain and preserve the value of its business and assets, including maintaining (and, where necessary, use reasonable efforts to renew) the policies of insurance and licences held by API,
as in place on the date of this document; and
 - (iv) respond to changes in market and operating conditions (without limitation to the other obligations under this clause 5.2);
- (b) keep Wesfarmers Sub reasonably informed, and consult with Wesfarmers Sub in good faith in respect, of any material developments concerning the financial affairs or conduct of its businesses;
- (c) promptly notify Wesfarmers Sub in writing of any of the following matters of which API becomes aware, and such notice must include a reasonable summary of the relevant matter, and consult in good faith with Wesfarmers Sub in relation to:
 - (i) events, facts, matters or circumstances which would or would be reasonably expected to either constitute a Material Adverse Change, or have a material adverse effect on the financial or operating performance, or the reputation or operating model (including the franchise operating model) of the API Group, or the API Group's relationships with Franchisees, financiers, customers, suppliers, licensors, licensees, the Pharmacy Guild of Australia, Government Agencies and others having business dealings with it;
 - (ii) any material developments in respect of material written correspondence with any Franchise Regulator;
 - (iii) any material developments in respect of the Consumer Brands Exit;
 - (iv) any material developments in respect of the Franchisee Claims (including any engagement with an insurer of the API Group in respect of such matters); or
 - (v) any breach of, or default under, any law, contract or Authorisation and which is reasonably likely to result in a material liability for any API Group Member;
- (d) not make any material changes to its policy or manner of collection of receivables as disclosed in the API Due Diligence Information, or materially depart from such policy or manner; and

- (e) ensure that no API Prescribed Event or API Regulated Event occurs.

5.3 **Exceptions to conduct of business provisions**

Nothing in clause 5.2 restricts the ability of any API Group Member to take or not take any action:

- (a) which has been consented to in writing by Wesfarmers Sub (such consent not be unreasonably withheld or delayed);
- (b) which has been Fairly Disclosed in the API Due Diligence Information;
- (c) which has been disclosed in the Public Register Information;
- (d) which is required or permitted by this document, the Scheme or applicable law;
- (e) to reasonably respond to:
 - (i) COVID-19 or any COVID-19 Measures; or
 - (ii) any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic, including the outbreak, escalation or any impact of, or recovery from, such epidemic or pandemic) other than COVID 19, affecting the business of the API Group to a material extent and provided that, to the extent reasonably practicable, API has consulted in good faith with Wesfarmers Sub in respect of the proposal to take such action or not take such action (as applicable) and consider any reasonable comments or requests of Wesfarmers Sub in relation to such proposal in good faith; or
- (f) in connection with an actual, proposed or potential Competing Proposal as permitted by clause 10.3.

6. **INTEGRATION PLANNING**

6.1 **Protocols**

API and Wesfarmers Sub acknowledge that they have entered into the Protocols, which set out principles and procedures that must be followed by API and Wesfarmers Sub in relation to their compliance with clause 6.2 and 6.3 and otherwise.

6.2 **Access to information**

- (a) Subject to clause 6.2(b) and the Protocols, between the date of this document and the Implementation Date, API Group will make available to Wesfarmers Group (and the Wesfarmers Agreed Representatives):
 - (i) access to the Data Room (only including any materials disclosed in the Data Room prior to the date of this document and on the basis that such materials can be printed and downloaded and, in the case of Microsoft Excel Workbook files and similar file formats, edited once downloaded);
 - (ii) reasonable access to information, premises and such Senior Executives of API as reasonably requested by Wesfarmers Sub at mutually convenient times, and afford Wesfarmers Sub reasonable co-operation; and
 - (iii) copies of the following final form materials, promptly following the relevant meeting at which the relevant final form materials are considered:

- (A) external audit reports in respect of the API Group; and
- (B) all material correspondence received from, or provided or proposed to be provided to, the Pharmacy Guild of Australia,

in each case, for the purposes of:

- (iv) Regulatory Approvals;
 - (v) Wesfarmers Sub developing a better understanding of the API Group's businesses, operations, financial position (including working capital and cashflow), prospects and affairs solely to facilitate the integration of the parties' businesses following implementation of the Scheme;
 - (vi) planning for implementation of the Scheme;
 - (vii) Wesfarmers Sub developing and implementing plans for the carrying on of the businesses of the API Group following implementation of the Scheme;
 - (viii) keeping Wesfarmers Sub informed of material developments relating to the API Group;
 - (ix) Wesfarmers Sub meeting its obligations under this document and verifying the API Representations and Warranties; and
 - (x) any other purpose which is agreed in writing between the parties.
- (b) API and Wesfarmers Sub acknowledge and agree that:
- (i) nothing in this clause 6.1 or elsewhere in this document:
 - (A) requires API to act at the direction of Wesfarmers Sub;
 - (B) gives Wesfarmers Sub any rights as to the decision making of API;
 - (C) gives Wesfarmers any rights to undertake further due diligence or enquiries in respect of the API Group; or
 - (D) requires API to provide information concerning its directors' and management's consideration of the Scheme or a Competing Proposal (without limiting API's obligations under clauses 10 and 10.4);
 - (ii) Wesfarmers Sub must focus on material issues, having regard to the impact of any request on API;
 - (iii) information or access need not be provided if:
 - (A) it would require API to provide information concerning an API director's or management's consideration of a Competing Proposal;
 - (B) it would result in unreasonable disruptions to, or interference with, API's business; or
 - (C) in the reasonable opinion of API, it:
 - (aa) is subject to an existing confidentiality obligation to a Third Party (provided that API has used all reasonable endeavours to obtain the consent of the relevant Third Party to the provision of disclosure or access to Wesfarmers Sub); or

(bb) would require a party to make any disclosure that would compromise legal privilege; and

(iv) information provided shall be subject to the Confidentiality Deed, the CCA and all applicable laws or requirements of any Government Agency.

6.3 Check-ins

During the period between the date of this document and the earlier of termination of this document and Implementation Date, the parties agree to participate in calls in accordance with and subject to the Protocols.

6.4 Change of Control Provisions

(a) As soon as practicable after the date of this document, API must use its reasonable endeavours to identify:

(i) any change of control or similar provisions in favour of any counterparty in any Change of Control Contracts to which an API Group Member is a party and any material Authorisations issued to an API Group Member which it considers (acting reasonably) is required to effect implementation of the Scheme (**Change of Control Provision**); and

(ii) any material agreements that require the consent of the relevant counterparty in order to grant a security interest over an interest in such agreements or the underlying assets to which any such agreement relates for the purposes of the API Group acceding to the Wesfarmers Group's facility agreements.

(b) In respect of each Change of Control Contract and material Authorisation, in each case, referred to in clause 6.4(a):

(i) API must use its reasonable endeavours to:

(A) initiate contact with the relevant counterparties or Government Agencies;

(B) procure that any notifications required to be given to such counterparties or Government Agencies in relation to the transaction contemplated by the Scheme (**Notifications**) are given;

(C) request that such counterparties or Government Agencies provide any consents required in relation to the transaction contemplated by the Scheme, in all cases subject to the Scheme becoming Effective (**Consents**);

(D) promptly provide to the relevant counterparties or Government Agencies all additional information reasonably required by them for the purposes of considering whether or not to give any Consent;

(E) make Representatives available to meet with the relevant counterparties or Government Agencies to address issues arising in relation to the Scheme or the Consents;

(F) comply with any reasonable requirements of the relevant counterparty or Government Agency as a condition of giving any Consent; and

(G) consult with Wesfarmers Sub in good faith in relation to the matters referred to in clauses 6.4(b)(i)(A) to 6.4(b)(i)(F) (including the form and content of any Notifications and Consents) and, to the extent

practicable and desirable, invite a reasonable number of Wesfarmers Agreed Representatives to be involved in material discussions in respect of any material Notifications or Consents; and

- (ii) Wesfarmers Sub and Wesfarmers must cooperate with, and provide all reasonable assistance to, API to obtain such Consents by:

- (A) providing any information required; and

- (B) making a reasonable number of Wesfarmers Agreed Representatives available, where necessary, for material discussions with relevant counterparties or Government Agencies.

- (c) The parties acknowledge that failure to obtain any Consent, despite API having complied with its obligations under clause 6.4(a), will not prevent, delay or otherwise affect implementation of the Scheme, and in no circumstances will it give rise to any liability under this document or otherwise in respect of the Scheme on the part of any API Group Member to any Wesfarmers Group Member (or any Third Party).

7. APPOINTMENT OF DIRECTORS AND RELEASES

7.1 Appointment of directors

API must, as soon as practicable on the Implementation Date, take all actions necessary, in accordance with the constituent documents of the relevant API Group Member, the Corporations Act and the ASX Listing Rules, to:

- (a) procure that all directors of the API Board, other than any existing API director which Wesfarmers Sub has agreed in writing will remain on the API Board:

- (i) resign; and

- (ii) unconditionally and irrevocably release API from any claims they may have against API,

and effect the appointment of each person nominated in writing by Wesfarmers Sub (not less than three Business Days before the Implementation Date) as new directors of the API Board; and

- (b) procure that all directors of the boards of directors of any other API Group Member and any director of the board of directors of SiSU Wellness Pty Ltd (ACN 166 905 602) appointed by API, other than any existing director which Wesfarmers Sub has agreed in writing will remain on the board of directors of the relevant API Group Member or SiSU Wellness Pty Ltd (ACN 166 905 602):

- (i) resign; and

- (ii) unconditionally and irrevocably release the relevant API Group Member from any claims they may have against that API Group Member,

and effect the appointment of each person nominated in writing by Wesfarmers Sub (not less than three Business Days before the Implementation Date) as new directors of those boards of directors,

subject to:

- (c) the Scheme Consideration being provided to Scheme Shareholders (other than the Excluded Shareholders); and

- (d) receipt by API of duly signed consents to act from each nominated director.

7.2 Deeds of insurance and indemnity

- (a) Subject to the Scheme becoming Effective, Wesfarmers Sub undertakes in favour of each API Group Member and each of its directors and officers that:
- (i) for a period of seven years after the Implementation Date, the constituent documents of each API Group Member will continue to contain such rules as are contained in those constituent documents at the date of this document that provide for each API Group Member 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 the API Group Member to any person other than an API Group Member; and
 - (ii) it will procure that each API Group Member complies with any deeds of indemnity, access and insurance made by it in favour of each of its directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' runoff insurance cover for such directors and officers is maintained for a period of seven years from the retirement date of each director and officer.
- (b) Subject to clause 7.2(c) but notwithstanding any other provision of this document, API may, prior to the Implementation Date, enter into arrangements for up to such seven year period to secure directors' and officers' runoff insurance with the same or substantially the same scope and terms as existing insurance policies in place for its directors or officers at the date of this document. Any actions to facilitate that insurance or in connection with such insurance will not be a breach of any provision of this document.
- (c) API must consult with Wesfarmers prior to entering into any arrangements contemplated by clause 7.2(b) and consider in good faith any runoff insurance proposed by Wesfarmers.
- (d) The undertakings contained in clause 7.2(a) are subject to restrictions in the Corporations Act or in any other applicable law, and will be read down accordingly.
- (e) Without limiting the terms of any deeds of indemnity, access and insurance made by an API Group Member in favour of its directors and officers from time to time, API receives and holds the benefit of clause 7.2(a) to the extent it relates to the other API Group Members and each of its directors and officers, as trustee for them.

7.3 Release

- (a) Subject to clause 7.3(b), each party releases all rights against, and agrees that it will not make any Claim, against the respective past or present directors, officers and employees of each of the other party and the other party's subsidiaries as at the date of this document and from time to time in relation to:
- (i) any information provided in relation to the Scheme;
 - (ii) any failure to provide information in relation to the Scheme; or
 - (iii) any breach of any representations, covenants and warranties of the other party to this document,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent that the relevant director, officer or employee has not acted in good faith or has engaged in wilful misconduct.

- (b) This clause is subject to restrictions in the Corporations Act or in any other applicable law, and will be read down accordingly.
- (c) This clause operates as a deed poll in favour of and for the benefit of each director, officer and employee of each party and may be relied on and enforced by each such director, officer and employee in accordance with its terms even though the director, officer or employee is not named as a party to this document.
- (d) For the avoidance of doubt, nothing in this clause 7.3 limits a party's right to terminate this document under clause 13.

8. ANNOUNCEMENT

8.1 Announcement of execution

Immediately following execution of this document (or as otherwise agreed by API and Wesfarmers Sub), each of API and Wesfarmers must make Announcements in Agreed Form in respect of the execution of this document and any other documents relating to the Scheme in Agreed Form.

8.2 No Announcement

Neither party may make an Announcement relating to the Scheme or otherwise relating to the subject matter of this document unless the Announcement or publication:

- (a) is required by this document;
- (b) has the prior written approval of the other party;
- (c) is required to be made by any applicable law or the ASX Listing Rules; or
- (d) would be consistent with past practices of the party or the expectations of that party's shareholders generally (in each case, as determined by that party acting reasonably).

8.3 Consultation on Announcements

- (a) If a party is permitted to make an Announcement under clause 8.2, it may do so only after:
 - (i) giving the other party such written notice as is reasonably practicable in the circumstances of its intention to make the Announcement;
 - (ii) consulting with the other party, to the extent practicable in the circumstances, as to the form and content of that Announcement (and after having taken all reasonable steps to restrict that disclosure to the greatest extent possible); and
 - (iii) providing the other party with a draft of the Announcement and an opportunity, to the extent practicable in the circumstances, to comment on the contents of the draft Announcement.
- (b) For the avoidance of doubt, nothing in this clause 8.3 requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law or the ASX Listing Rules.

8.4 Excluded Announcements

Clauses 8.2 and 8.3 do not apply to any Announcement relating to:

- (a) an actual, proposed or potential Competing Proposal; or
- (b) the termination of this document in accordance with its terms.

9. **CONFIDENTIALITY AND PROTOCOLS**

- (a) All information provided under or in connection with this document is subject to the terms of the Confidentiality Deed which continues to have full force and effect subject to this document. The rights and obligations of the parties under the Confidentiality Deed survive termination of this document. To the extent of any inconsistency between the Confidentiality Deed and this document, the terms of this document will prevail.
- (b) Each of API, Wesfarmers Sub and Wesfarmers acknowledge and agree that it is bound by the Protocols in respect of all communications with the other party and any information received by it from the other party on, before or after the date of this document. To the extent of any inconsistency between the Protocols and this document, the terms of this document will prevail.

10. **EXCLUSIVITY**

10.1 **Existing discussions**

API represents and warrants to Wesfarmers Sub that, as at the date of this document:

- (a) it and its Related Entities and their respective Representatives are not, directly or indirectly, participating in any discussions or negotiations with a Third Party that concern, or that could be reasonably expected to lead to, any actual, proposed or potential Competing Proposal;
- (b) it and its Related Entities and their respective Representatives have ceased any discussions or negotiations with any Third Party that concern, or that could be reasonably expected to lead to, any actual, proposed or potential Competing Proposal; and
- (c) it and its Related Entities and their respective Representatives have ceased provision of any non-public information in relation to API Group to any Third Party in circumstances where the provision of such information has been provided or made available for the purposes of that Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, any actual, proposed or potential Competing Proposal.

10.2 **No shop, no talk and no due diligence**

During the Exclusivity Period, API must not (and must ensure that none of its Representatives, nor any other person on its behalf) directly or indirectly:

- (a) **(no shop):**
 - (i) solicit, encourage, initiate or invite any enquiries, negotiations, expressions of interest, offers, proposals or discussions with any person in relation to, or which could reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal; or
 - (ii) announce or communicate to any person any intention to do any of those things;
- (b) **(no talk)** subject to clause 10.3:

- (i) negotiate or enter into any agreement, arrangement or understanding; or
- (ii) participate in or continue any negotiations or discussions,

with respect to any enquiry, expression of interest, offer, proposal or discussion by any person in relation to, or that may reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal, or offer, agree, announce or communicate to any person any intention to do any of those things; or

- (c) **(no due diligence)** without limiting clause 10.2(b), and subject to clauses 10.3 and 10.4:
 - (i) disclose or otherwise provide or make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to API Group in connection with that Third Party making, formulating, developing or finalising a Competing Proposal; or
 - (ii) offer, agree, announce or communicate to any person any intention to do any of those things,

but nothing in this clause 10.2 prevents API or any of its Representatives from:

- (d) engaging with API Shareholders;
- (e) engaging with contractual counterparties, customers or suppliers of API;
- (f) making presentations to, and responding to enquiries from, brokers, portfolio investors or analysts;
- (g) fulfilling its continuous disclosure obligations or making announcements to ASX;
- (h) providing any information to:
 - (i) API's auditors or Advisers;
 - (ii) API's Representatives; or
 - (iii) any Government Agency;
- (i) promoting the merits of the Scheme,

in the case of paragraphs (d) to (f) above, in the ordinary course of business and other than in relation to an actual, proposed or potential Competing Proposal; or

- (j) responding to any person in relation to any offer, expressions of interest or proposals by that person to make, or that may reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal to:
 - (i) acknowledge receipt; or
 - (ii) advise that person that API is bound by the provisions of this clause 10.2 and is only able to engage in negotiations, discussions or other communications if the fiduciary exception in clause 10.3 applies.

10.3 **Fiduciary exception**

The restrictions in clauses 10.2(b), 10.2(c) and 10.5 do not prohibit any action or inaction by API or any of its Representatives in relation to an actual, proposed or potential Competing Proposal which the API Board, acting in good faith, determines:

- (a) after consultation with API's financial and legal advisers, is, or would be reasonably likely to lead to, a Superior Proposal if it were proposed; and
- (b) after receiving written advice from API's legal advisers, that failing to take or not take such action would, or would be reasonably likely to, constitute a breach of any of the fiduciary duties or statutory obligations of any API director,

provided there has not been any breach of clause 10.2(a) in respect of that actual, proposed or potential Competing Proposal.

10.4 **Provision of information**

Without limitation to clause 10.2, during the Exclusivity Period, API must not, and must procure that each of its Representatives and each other API Group Member and the Representatives of those API Group Members do not, directly or indirectly, disclose or otherwise provide or make available any non-public information to a Third Party in connection with an actual, proposed or potential Competing Proposal, unless:

- (a) before any non-public information is provided to a Third Party pursuant to clause 10.3, that Third Party has entered into a written agreement in favour of API restricting the use and disclosure by that Third Party and its Representatives of the information made available to that Third Party on terms no less onerous on the Third Party in any respect than the obligations on Wesfarmers under the Confidentiality Deed; and
- (b) to the extent that any non-public information made available to the Third Party has not previously been provided to Wesfarmers Sub, API must provide that information to Wesfarmers Sub at the same time it is provided to that Third Party.

10.5 **Return of non-public information**

Subject to clause 10.3 and any customary carve-outs contained in the relevant Third Party Confidentiality Agreement, API must, on the date of this document, enforce its rights under all Third Party Confidentiality Agreements, including, to the extent that disclosure is not being provided pursuant to clause 10.3, to procure the delivery to API, or the destruction of, all records (including copies) in any form or media that contain, refer to or are based on any API Due Diligence Information or non-public information in respect of API or the API Group provided by API to the Third Party.

11. **NOTIFICATION AND MATCHING RIGHTS**

11.1 **Notification**

If, during the Exclusivity Period:

- (a) any API Group Member or any of their respective Representatives, becomes aware of any:
 - (i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal; or

- (ii) proposal made to any API Group Member or any of their respective Representatives in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or

- (b) API takes any action in reliance on the exception in clause 10.3,

API must as soon as reasonably practicable (and in any event within 48 hours) give Wesfarmers Sub an Approach Notice.

11.2 Matching right

- (a) If, during the Exclusivity Period, the API Board, acting in good faith and in order to satisfy what the directors of API consider to be their statutory or fiduciary duties (having consulted with its financial advisers and received written legal advice from its external legal advisers), determine that a Competing Proposal is a Superior Proposal which is on terms capable of acceptance by API and which, but for this clause 11.2, API has elected to accept by entry into legally binding agreements to give effect to the Competing Proposal and recommend it publicly, API must as soon as reasonably practicable (and in any event within 24 hours of making that determination) give Wesfarmers Sub the Matching Right Notice.
- (b) During the five Business Day period commencing from the time that API gives Wesfarmers Sub the Matching Right Notice (as extended pursuant to clause 11.2(c)(iii), if applicable) (**Matching Period**):
- (i) API must not, and must procure that each other API Group Member does not, enter any agreement, arrangement or understanding (whether or not in writing, conditional or unconditional, legally binding or otherwise) pursuant to which one or more of a Third Party, API or any other API Group Member proposes or propose to undertake or give effect to the Competing Proposal;
- (ii) API must use its reasonable endeavours to ensure that no API director makes any public statement recommending the Competing Proposal to the API Shareholders (or recommend against the Scheme) or make any public statement to the effect that they may do so at a future point; and
- (iii) Wesfarmers Sub may offer to amend the terms of the Scheme, this document or make an alternative proposal to API with a view to providing an equivalent or a superior outcome for the API Shareholders than those offered under the relevant Competing Proposal (**Counter Proposal**).
- (c) If, during the Matching Period, Wesfarmers Sub makes a Counter Proposal:
- (i) API must procure that the API Board considers the Counter Proposal and determines whether, acting reasonably and in good faith, the Counter Proposal would provide an equivalent or superior outcome for API Shareholders, taken as a whole, compared with the Competing Proposal, taking into account all of the terms and conditions of the Counter Proposal and then promptly give Wesfarmers Sub notice, in writing, of the determination of the API Board; and
- (ii) if the API Board, acting reasonably and in good faith, determines that the terms and conditions of the Counter Proposal, taken as a whole, would provide an equivalent or superior outcome to API Shareholders than those in the relevant Competing Proposal, then:
- (A) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and

implement the Counter Proposal as soon as reasonably practicable;
and

(B) API must use its reasonable endeavours to procure that each API director makes a public statement recommending the Counter Proposal to the API Shareholders; and

(iii) if the determination is that the Counter Proposal would not provide an equivalent or superior outcome for API Shareholders, taken as a whole, compared with the Competing Proposal, then API must allow Wesfarmers Sub a further three Business Days to amend the Counter Proposal to address the reasons identified by API in the notice given under clause 11.2(c)(i) above (and the Matching Period will be extended by such three Business Days in such circumstances) and, if Wesfarmers Sub does so, then the process in 11.2(c)(ii) will apply to the amended Counter Proposal.

(d) Any material change to a any proposal, agreement, arrangement or transaction in relation to a Competing Proposal including any:

(i) material change to the terms; or

(ii) incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or binding on the Third Party,

will be taken to constitute a new Competing Proposal in respect of which API must separately comply with its obligations under clauses 11.1 and 11.2 (inclusive).

12. **BREAK FEE**

12.1 **Background**

Each of API and Wesfarmers Sub:

(a) confirms its belief that the Scheme will provide significant benefits to API, Wesfarmers Sub and their respective shareholders;

(b) has requested that provisions be made in this document for the payments set out in clauses 12.2 and 12.3, in the absence of which it would not have entered into this document;

(c) confirms its belief that it is appropriate to agree to the payment which it agrees to make under clause 12.2 or 12.3 (as applicable) in order to secure the other party's participation in the Scheme;

(d) acknowledges that each of them has incurred, and will further incur, significant costs and expenses in connection with performing its obligations under this document and the Scheme, which will include significant opportunity costs if the Scheme is not implemented; and

(e) acknowledges that it has received external legal advice in relation to this clause 12 and that the amount it has agreed to pay under this clause 12 is an amount which is appropriate to compensate the other party for its reasonable external and internal costs and opportunity costs in connection with the Scheme, including for:

(i) reasonable adviser costs relating to the Scheme;

(ii) costs of management and directors' time;

(iii) reasonable out-of-pocket expenses relating to the Scheme; and

- (iv) reasonable opportunity costs incurred by Wesfarmers Sub or API (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which Wesfarmers Sub or API (as applicable) could have developed to further its business and objectives,

and each party acknowledges and agrees that:

- (v) the costs actually incurred by it will be of such a nature that they cannot be accurately ascertained; and
- (vi) the amount it has agreed to pay under this clause 12 is a genuine and reasonable pre-estimate of those costs.

12.2 **Payment by API to Wesfarmers Sub**

API undertakes to pay Wesfarmers Sub the API Break Fee, without withholding (unless required by law, in which case the amount of the payment due by API is increased to an amount which (after making any such withholding) is equivalent to an amount that would have been due to Wesfarmers Sub if not withholding had been required by law) or set off, if:

- (a) **(change of Recommendation or Voting Intention)** prior to the End Date, any API director:

- (i) does not make the Recommendation or Voting Intention in accordance with clause 4.2(a);
- (ii) withdraws or adversely changes (including by attaching any adverse qualifications to) an earlier Recommendation or Voting Intention; or
- (iii) approves, recommends or makes an announcement in support of a Competing Proposal, or announces an intention to do any of those things,

except where:

- (iv) the adverse change, adverse qualification or withdrawal occurs because of a requirement or request by a court or Government Agency that the relevant director abstains from making the Recommendation or Voting Intention;

- (v) API has validly terminated this document under clause 13.1:

- (A) because any Condition set out in items 2 (API Shareholder approval), 3 (Court approval of Scheme), 4 (No regulatory actions) or 9 (Wesfarmers Sub and Wesfarmers Representations and Warranties) (inclusive) will not be fulfilled;
- (B) because Wesfarmers Sub is in material breach of this document; or
- (C) because of the Effective Date not occurring by the End Date; or

- (vi) the Independent Expert:

- (A) concludes (either in its initial Independent Expert's Report or in any written update, revision, amendment, addendum or supplementary reports to it) that the Scheme is not in the best interests of API Shareholders; or
- (B) withdraws its Independent Expert's Report prior to 5.00 pm on the day before the Second Court Date,

in either case, other than where the conclusion or withdrawal is due (where in whole or part) to the existence, announcement or publication of a Superior Proposal,

provided that, for the avoidance of doubt, a statement made by the API Board to the effect that no action should be taken by API Shareholders pending the assessment of a Competing Proposal by the API Board or the completion of the matching right process set out in clause 11.2 will not of itself require API to pay Wesfarmers Sub the API Break Fee;

(b) **(Competing Proposal)** either:

- (i) during the Exclusivity Period, API accepts or enters into, or offers to accept or enter into, any binding documentation to give effect to or implement a Competing Proposal; or
- (ii) prior to the End Date, a Competing Proposal is announced, made or becomes open for acceptance and, within nine months after the End Date (regardless of whether this document is terminated before or after the End Date), the relevant proponent of, or an Associate of the relevant proponent of, that Competing Proposal:
 - (A) acquires voting power of (or an economic interest in) 50% or more of all API Shares and that Competing Proposal is (or becomes) free from any defeating conditions;
 - (B) substantially completes a Competing Proposal of the type referred to in any of subparagraphs (a)(i) or (a)(iv) of the definition of Competing Proposal; or
 - (C) enters into any agreement, arrangement or understanding (whether or not in writing, conditional or unconditional, legally binding or otherwise) with an API Group Member to give effect to the Competing Proposal; or

(c) **(API material breach)** this document is validly terminated by Wesfarmers Sub in accordance with clause 13.1(d).

12.3 **Payment by Wesfarmers Sub to API**

Wesfarmers Sub undertakes to pay API the Wesfarmers Break Fee, without withholding (unless required by law, in which case the amount of the payment due by Wesfarmers Sub is increased to an amount which (after making any such withholding) is equivalent to an amount that would have been due to API if not withholding had been required by law) or set off, if this document is validly terminated by API in accordance with:

- (a) **(Wesfarmers Sub material breach)** clause 13.1(d); or
- (b) **(withdrawal of support)** clause 13.3(a).

12.4 **Demand for payment**

If an event referred to in clause 12.2 or 12.3 (as applicable) occurs, any demand by:

- (a) Wesfarmers Sub for payment of the API Break Fee under clause 12.2; or
- (b) API for payment of the Wesfarmers Break Fee under clause 12.3,

in either case, must:

- For personal use only
- (c) be in writing;
 - (d) be made after the occurrence of the event in the clause giving rise to the right to payment;
 - (e) state the circumstances which give rise to the demand; and
 - (f) nominate an account in the name of the party entitled to the payment into which the other party is to pay such payment,

and such payment must be paid into the account nominated within 30 Business Days of receipt of the demand.

12.5 **No payment if Scheme becomes Effective**

- (a) No amount is payable by API or Wesfarmers Sub under this clause 12 if the Scheme becomes Effective, notwithstanding the occurrence of an event in clause 12.2 or clause 12.3 (as the case may be), and any amount paid under this clause 12 in circumstances where the Scheme becomes Effective is immediately repayable by the recipient.
- (b) Notwithstanding anything else in this document an amount payable by API or Wesfarmers Sub (as applicable) under this clause 12 is payable only once.

12.6 **Other Claims**

- (a) Subject to clause 12.6(e), the maximum aggregate amount that API is required to pay in relation to this document (including any breach of this document) is the API Break Fee and in no event will the aggregate liability of API in connection with this document exceed the API Break Fee.
- (b) Subject to clause 12.6(e), the maximum aggregate amount that Wesfarmers Sub is required to pay in relation to this document (including any breach of this document) is the Wesfarmers Break Fee and in no event will the aggregate liability of Wesfarmers Sub in connection with this document exceed the Wesfarmers Break Fee.
- (c) Notwithstanding any clause in this document other than clause 12.6(e), if an amount is paid by API under clause 12.2 (or is payable, but no demand is made), that amount is received by Wesfarmers Sub (or is payable) in complete settlement of any and all Claims that Wesfarmers Sub may have against API in respect of the Scheme or in connection with this document.
- (d) Notwithstanding any clause in this document other than clause 12.6(e), if an amount is paid by Wesfarmers Sub under clause 12.3 (or is payable, but no demand is made), that amount is received by API (or is payable) in complete settlement of any and all Claims that API may have against Wesfarmers Sub in respect of the Scheme or in connection with this document.
- (e) This clause 12 does not limit any rights or obligations under the Deed Poll.

12.7 **Compliance with law**

- (a) If the Takeovers Panel or a court of competent jurisdiction determines that an amount paid or payable under clause 12.2 or 12.3 is an Impugned Amount and:
 - (i) the period for lodging an application for review or a notice of appeal of that decision has expired without such application or notice having been lodged; or

- (ii) an application for review or a notice of appeal has been lodged with the Takeovers Panel or a court within the prescribed period and the relevant review panel or court also determines that the amount is an Impugned Amount,

then:

- (iii) the undertaking under clause 12.2 or 12.3 (as applicable) does not apply to the extent of the Impugned Amount; and
 - (iv) if a party has been paid an Impugned Amount under this document, it must refund that Impugned Amount to the other party.
- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a court of competent jurisdiction for or in relation to a declaration or other order that an amount paid or payable under clause 12.2 or 12.3 is an Impugned Amount.

13. **TERMINATION**

13.1 **Termination by either party**

Wesfarmers Sub or API (the **Terminating Party**) may terminate this document by giving notice in writing to the other party:

- (a) in the circumstances set out in, and in accordance with, clause 3.7;
- (b) if API Shareholder Approval is not obtained at the Scheme Meeting and the Terminating Party has not given or received notice in accordance with clause 3.10;
- (c) if the Terminating Party has given or received notice in accordance with clause 3.10, any application to the Court for the Order in accordance with clause 3.10 is unsuccessful; or
- (d) at any time before 8.00 am on the Second Court Date, the other party (the **Defaulting Party**) commits a breach of this document (including a Representation and Warranty) and:
 - (i) the breach is material in the context of the Scheme taken as a whole (provided that a breach of clause 5.2(e) due to the occurrence of an API Regulated Event marked with an asterisk (*) is to be considered material for such purpose, without limitation to the application of this clause 13.1(d)(i) to any other breach of clause 5.2(e));
 - (ii) the Terminating Party has given the Defaulting Party written notice setting out the relevant circumstances giving rise to the breach, and stating an intention to terminate this document; and
 - (iii) the relevant circumstances giving rise to the breach are not remedied to the Terminating Party's reasonable satisfaction by the earlier of:
 - (A) five Business Days after the date of the notice given by the Terminating Party under clause 13.1(d)(ii); or
 - (B) 5.00 pm on the Business Day before the Second Court Date.

13.2 Termination by Wesfarmers Sub

Wesfarmers Sub may terminate this document by giving notice in writing to API, at any time before 8.00 am on the Second Court Date, if:

- (a) any API director:
 - (i) does not make the Recommendation or Voting Intention in accordance with clause 4.2(a);
 - (ii) withdraws or adversely changes (including by attaching any adverse qualifications to) an earlier Recommendation or Voting Intention; or
 - (iii) approves, recommends or makes an announcement in support of a Competing Proposal, or otherwise makes a public statement indicating that he or she no longer recommends the Scheme or recommends, supports or endorses a Competing Proposal, or makes a public statement indicating an intention to do any of these acts (but excluding a statement made by the API Board to the effect that no action should be taken by API Shareholders pending the assessment of a Competing Proposal by the API Board or the completion of the matching right process set out in clause 11.2); or
- (b) in any circumstance (including, for the avoidance of doubt, where permitted by clause 11.2) API enters into any legally binding agreement to give effect to any actual, proposed or potential Competing Proposal.

13.3 Termination by API

API may terminate this document by giving notice in writing to Wesfarmers Sub, at any time before 8.00 am on the Second Court Date, if:

- (a) any Wesfarmers Sub or Wesfarmers director publicly withdraws their support for the Scheme; or
- (b) a majority of the API directors:
 - (i) does not make the Recommendation or Voting Intention in accordance with clause 4.2(a);
 - (ii) withdraws or adversely changes (including by attaching any adverse qualifications to) an earlier Recommendation or Voting Intention; or
 - (iii) approves, recommends or makes an announcement in support of a Competing Proposal, or announces an intention to do any of these things (but excluding a statement made by the API Board to the effect that no action should be taken by API Shareholders pending the assessment of a Competing Proposal by the API Board or the completion of the matching right process set out in clause 11.2),

provided that API may not terminate this document pursuant to clause 13.3(b) if the matching right process under clause 11.2 has not been completed.

13.4 Effect of termination

If a party terminates this document in accordance with this clause 13, this document will cease to have force and effect without any liability or obligation on the part of any party, except that:

- For personal use only
- (a) this clause 13, and clauses 7.3 (Releases), 8 (Announcement), 9 (Confidentiality), 12 (Break Fee), 14 (Representations and Warranties), 15 (Indemnities), 16 (GST), 17 (Notices) and 18 (General) will survive termination and remain in force; and
 - (b) each party will retain any rights it has or may have against the other party in respect of any past breach of this document, including in respect of the breach giving rise to termination.

13.5 **Notice of termination**

Where a party has a right to terminate this document, 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 document and the provision under which it terminates this document.

13.6 **Remedies**

- (a) The parties acknowledge and agree that damages may not be a sufficient remedy for breach of this document. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this document by any party, notwithstanding the ability of any party to terminate this document or seek damages for such a breach or threatened breach.
- (b) For the avoidance of doubt, clause 13.6(a) is subject to clause 12.6.

14. **REPRESENTATIONS AND WARRANTIES**

14.1 **Mutual Representations and Warranties**

Each party represents and warrants to the other party that:

- (a) **(status)** it is a validly existing corporation registered under the laws of the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and carry out the transactions that this document contemplates in accordance with its terms;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise it entering into this document and carrying out the transactions that this document contemplates in accordance with its terms;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that this document contemplates in accordance with its terms;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any such Authorisation is subject;
- (e) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;

- (f) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that it contemplates in accordance with its terms, does or will contravene:
- (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) any Authorisation held by it;
 - (iii) any undertaking or instrument binding on it or any of its property; or
 - (iv) its constituent documents;
- (g) **(no Insolvency Event)** neither it nor any of its subsidiaries is affected by an Insolvency Event;
- (h) **(no other approvals necessary)** to its knowledge, no consents, approvals or other acts by a Government Agency are necessary to effect implementation of the Scheme, other than the Regulatory Approvals;
- (i) **(not representative capacity)** it is not entering into this document as trustee of any trust or settlement or otherwise in a representative capacity; and
- (j) **(information provided to the Independent Expert)** all information provided by it to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.

14.2 **API Representations and Warranties**

API represents and warrants to Wesfarmers Sub that:

- (a) **(API Due Diligence Information not false or misleading)** it has collated the API Due Diligence Information in good faith for the purposes of a confirmatory due diligence process and, in this context, to API's knowledge, API has not:
- (i) omitted anything from the API Due Diligence Information that would make any part of that information false or misleading in any material respect; or
 - (ii) included anything false or misleading in any material respect in the API Due Diligence Information; and
 - (iii) API is not aware of any information relating to the API Group or its respective businesses or operations (having made reasonable enquiries) that has or could be reasonably be expected to give rise to a Material Adverse Change that has not been disclosed in the API Due Diligence Information;
- (b) **(API Material not false or misleading)** as at the date of dispatch of the Scheme Booklet, the API Material contained in the Scheme Booklet:
- (i) does not contain any material statement which is false or misleading in any material respect (including because of any material omission) having regard to applicable disclosure requirements; and
 - (ii) complies in all material respects with all applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules;

- For personal use only
- (c) **(new information)** it will, as a continuing obligation (but in respect of the Wesfarmers Material, only to the extent that Wesfarmers Sub provides API with updates to the Wesfarmers Material), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been dispatched to API Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission) in any material respect;
 - (d) **(continuous disclosure)** as at the date of this document, API is not in breach of its continuous disclosure obligation under ASX Listing Rule 3.1 and, except for information contained in the Announcement to be made in accordance with clause 8.1, API is not withholding disclosure of any information in reliance on ASX Listing Rule 3.1A;
 - (e) **(compliance)** other than as Fairly Disclosed in the API Due Diligence Information or disclosed in the Public Register Information, API and its wholly owned subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them (disregarding any instances of non-compliance that individually and in aggregate could not reasonably be expected to have a material adverse effect on API);
 - (f) **(no default)** other than as Fairly Disclosed in the API Due Diligence Information or disclosed in the Public Register Information:
 - (i) neither API nor any of its wholly owned subsidiaries is in default under any document or agreement binding on it or its assets; and
 - (ii) nothing has occurred which is, or would with the giving of notice or lapse of time, or both, constitute an event of default, prepayment event or similar event, or would give another party a termination right or right to accelerate any material right or obligation, under any such document or agreement;
 - (g) **(no litigation)** other than as Fairly Disclosed in the API Due Diligence Information or disclosed in the Public Register Information, no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to its knowledge, threatened;
 - (h) **(schedule accurately details API capital)** Schedule 1 accurately records the total number and details of API Shares, securities convertible into API Shares, notes or other securities (including API Performance Rights) issued by API at the date of this document and, other than as disclosed in writing to Wesfarmers Sub before the date of this document, API is not under any actual or contingent obligation to issue, convert or cancel any securities other than as listed in Schedule 1;
 - (i) **(financial statements)** as far as API is aware, there has not been any event, change, effect or development that would require API to restate API's financial statements as disclosed to ASX for the financial year ended 31 August 2020 or the half year ended 28 February 2021 and those financial statements:
 - (i) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, applicable accounting standards and all other applicable laws and regulations; and
 - (ii) give a true and fair view of the financial position and the assets and liabilities of the API Group; and
 - (j) **(advisers)** as at the date of this document, it has provided a complete and accurate summary of the aggregate fees payable in all retainers and mandates with Financial

Advisers and fee estimates for other advisers in relation to the Scheme and any Competing Proposals where such retainer or mandate is current.

14.3 **Wesfarmers Sub and Wesfarmers Representations and Warranties**

Each of Wesfarmers Sub and Wesfarmers represents and warrants to API that:

- (a) **(Wesfarmers Material not false or misleading)** as at the date of dispatch of the Scheme Booklet, the Wesfarmers Material:
 - (i) does not contain any material statement which is false or misleading (including because of any material omission) having regard to applicable disclosure requirements; and
 - (ii) complies in all material respects with all applicable laws, relevant ASIC regulatory guides (including RG 60), Takeovers Panel policy and guidance notes and the ASX Listing Rules;
- (b) **(new information)** it will, as a continuing obligation, provide to API all further or new information which arises after the Scheme Booklet has been dispatched to API Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Wesfarmers Material is not misleading or deceptive (including by way of omission);
- (c) **(sufficient cash amounts – reasonable expectation at date of this document)** at all times between the date of this document and 8.00 am on the Second Court Date, Wesfarmers Sub and Wesfarmers each have a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Wesfarmers Sub's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (d) **(sufficient cash amounts – unconditional at Second Court Date)** by 8.00 am on the Second Court Date, Wesfarmers Sub or Wesfarmers will have available to it on an unconditional basis (other than conditions related to Court approval of the Scheme or other procedural matters which, by their nature, can only be satisfied or performed after the Second Court Date) sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Wesfarmers Sub's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (e) **(sufficient cash amounts – available on Implementation Date)** Wesfarmers Sub or Wesfarmers will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Wesfarmers Sub's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (f) **(dealings with API directors or employees)** neither it nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of API in relation to the Scheme after the Effective Date;
- (g) **(dealings in API Shares)** as at the date of this document:
 - (i) Wesfarmers Group has a relevant interest in 95,068,472 API Shares and no Wesfarmers Group Member has a relevant interest in, or a right to acquire,

any other API Shares (whether issued or not or held by Wesfarmers Sub or not); and

- (ii) other than the Option Letter, no Wesfarmers Group Member has entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of securities in API (including API Shares) or any other API Group Member or of any assets of API or any other API Group Member (including cash-settled derivative contract, contracts for difference or other derivative contracts); and

(h) **(other dealings)** as at the date of this document, other than:

- (i) as disclosed to API in writing by or on behalf of Wesfarmers Sub on or before the date of this document; or
- (ii) as contemplated by this document, the Scheme or the standstill clause in the Confidentiality Deed,

no Wesfarmers Group Member has any agreement, arrangement or understanding (whether written or oral) in relation to the securities, business, operations or assets of an API Group Member (including in relation to the securities, business or operations or assets of an API Group Member at the Implementation Date) or any other commercial or other arrangements related to an API Group Member, any territory or jurisdiction in which an API Group Member operates or the performance or conduct of the business of the API Group (in whole or in part), or the Scheme.

14.4 **Qualifications on API Representations and Warranties**

Each API Representation and Warranty and the indemnity given in clause 15.1 are subject to matters that (and will not be considered breached to the extent that they):

- (a) are within the knowledge of Wesfarmers Sub at the date of this document;
- (b) have been Fairly Disclosed in the API Due Diligence Information;
- (c) have been disclosed in the Public Register Information; or
- (d) are required or expressly permitted by this document or the Scheme.

14.5 **No representations made on economic or future matters**

Each party acknowledges and agrees that:

- (a) the other party makes no representation or warranty other than as given or made under clauses 14.1, 14.2 and 14.3 (as applicable); and
- (b) at no time has the other party given or made any representation or warranty in relation to the achievability of:
 - (i) any economic, fiscal or other interpretations or evaluations by it; or
 - (ii) future matters, including future or forecast costs, prices, revenues or profits.

14.6 **Reliance on Representations and Warranties**

- (a) Each party acknowledges that the other party has executed this document and agreed to take part in the transactions that this document contemplates in reliance on the Representations and Warranties.

- (b) Each party acknowledges and confirms that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, other than the Representations and Warranties, and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this document, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.

14.7 **When Representations and Warranties are given**

Each Representation and Warranty is given:

- (a) as at the date of this document; and
- (b) as at 8.00 am on the Second Court Date,

unless that Representation and Warranty is expressed to be given at a particular time, in which case it is given at that time.

14.8 **Information on Representations and Warranties**

From the date of this document until the Implementation Date (inclusive), each party must promptly give to the other party details of any matter or occurrence which might reasonably make any Representation and Warranty given or made by the first mentioned party under this document inaccurate.

14.9 **Survival of Representations and Warranties**

Each Representation and Warranty:

- (a) is severable;
- (b) survives the termination of this document;
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this document;
- (d) is to be construed independently of all other Representations and Warranties; and
- (e) is not limited by any other Representation and Warranty.

15. **INDEMNITIES**

15.1 **Indemnities by API**

- (a) Subject to clause 12.6, API indemnifies Wesfarmers Sub and each other Wesfarmers Indemnified Party against, and must pay on demand, any Loss, Claim or damages (including any right to common law damage) arising from or incurred in connection with a breach of an API Representation and Warranty to the fullest extent permitted by law.
- (b) Wesfarmers Sub receives and holds the benefit of the indemnity in clause 15.1(a) as trustee for each other Wesfarmers Indemnified Party.

15.2 **Indemnities by Wesfarmers and Wesfarmers Sub**

- (a) Subject to clause 12.6, Wesfarmers Sub and Wesfarmers each indemnify API and each other API Indemnified Party against, and must pay on demand, any Loss, Claim or damages (including any right to common law damage) arising from or incurred in

connection with a breach of a Wesfarmers Sub and Wesfarmers Representation and Warranty to the fullest extent permitted by law.

- (b) API receives and holds the benefit of the indemnity in clause 15.2(a) as trustee for each other API Indemnified Party.

15.3 **Survival of indemnities**

Each indemnity given in clause 15.1 and 15.2:

- (a) is severable;
- (b) survives the termination of this document;
- (c) is a continuing obligation; and
- (d) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this document.

16. **GST**

16.1 **GST pass on**

If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount for GST on the supply:

- (a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

16.2 **Tax invoice**

The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice of adjustment note.

16.3 **Consideration exclusive of GST**

Other than in this clause 16.3, any consideration otherwise provided for a supply or payment obligation in connection with this document is exclusive of GST unless stated otherwise.

16.4 **Adjustments**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days written notice; or

- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Australian Commissioner of Taxation; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event except where the recipient is required to issue an adjustment note or tax invoice in relation to the supply.

16.5 **Reimbursements**

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

16.6 **Survival**

This clause 16 will continue to apply after expiration or termination of this document.

17. **NOTICES**

17.1 **How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
- (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email.

17.2 **When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail, three Business Days after posting; or
- (b) if it is sent by email, the earlier of:
- (i) the time that the sender receives an automated notification that the email was successfully transmitted and read by the recipient;
 - (ii) the time that the recipient responds by reply email; or
 - (iii) four hours after the email was sent (as recorded on the device from which the sender sent the email),

provided that no notice of failure of transmission or other error message is received by the sender.

17.3 Address for notices

A person's address for notices are those set out below, or as the person notifies the sender:

Party	Attention	Address	Email
API	Anne Mustow, General Counsel and Company Secretary	Level 5, 250 Camberwell Road, Camberwell, Victoria 3124	
with a copy to (such copy not to constitute notice)	Elspeth Arnold, Partner Andrew Kim, Partner	Level 16, 80 Collins Street, South Tower, Melbourne, Victoria 3000	
Wesfarmers Sub	Ed Bostock, Managing Director, Business Development	Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000	
with a copy to (such copy not to constitute notice)	Adam Charles, Partner Baden Furphy, Partner	Level 22, 80 Collins Street, Melbourne, Victoria 3000	
Wesfarmers	Ed Bostock, Managing Director, Business Development	Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000	
with a copy to (such copy not to constitute notice)	Adam Charles, Partner Baden Furphy, Partner	Level 22, 80 Collins Street, Melbourne, Victoria 3000	

18. GENERAL

18.1 Amendment

This document can only be amended or replaced by another document executed by the parties.

18.2 Assignment

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the prior written consent of the other party.

18.3 **Governing law**

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of Victoria, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document. Each party irrevocably waives any right it has to object to any legal process being brought in those courts including any claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

18.4 **Liability for expenses**

- (a) Wesfarmers Sub must pay all stamp duty and any related fines and penalties in respect of the Scheme and this document, the performance of this document and each transaction effected by or made under or in connection with the Scheme and this document.
- (b) Subject to clause 18.4(a), each party must pay its own expenses incurred in negotiating, preparing, executing and registering this document.

18.5 **Giving effect to this document**

Each party must promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this document.

18.6 **Variation of rights**

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

18.7 **No partnership or agency**

Nothing in this document is to be treated as creating a partnership and, except as specifically provided in this document, no party may act as agent of or bind another party to any obligation.

18.8 **Operation of this document**

- (a) This document, the Scheme, the Deed Poll, the Confidentiality Deed and the Protocols contain the entire agreement between the parties about its subject matter.
- (b) Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document, the Scheme, the Deed Poll, the Confidentiality Deed and the Protocols and has no further effect.
- (c) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (d) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

18.9 **Operation of indemnities**

A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

18.10 **Consents**

Where this document contemplates that a party may agree or consent to something (however it is described), unless this document expressly contemplates otherwise, the party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions.

18.11 **No merger**

No provisions of this document merge on implementation of the Scheme.

18.12 **Inconsistency with other documents**

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

18.13 **Counterparts**

This document may be executed in counterparts.

SCHEDULE 1
CAPITAL STRUCTURE

Security	Total number on issue
API Shares	492,656,035
API Performance Rights	5,879,621 comprising: <ul style="list-style-type: none"> • 1,487,711 issued under the LTIP in respect of the performance period between 1 September 2019 and 31 August 2022; • 2,483,900 issued under the LTIP in respect of the performance period between 1 September 2020 and 31 August 2023; • 1,555,500 issued under the LTIP in respect of the performance period between 1 September 2021 and 31 August 2024; and • 352,510 issued under the STIP (2021).

SCHEDULE 2

API SPECIFIED ENTITIES

1. Australian Pharmaceutical Industries Limited (ACN 000 004 320);
2. Synapse Finance Pty Ltd (ACN 107 444 299);
3. New Price Retail Finance Pty Ltd (ACN 107 444 315);
4. New Price Retail Pty Ltd (ACN 082 268 362);
5. New Price Retail Services Pty Ltd (ACN 100 732 750);
6. Priceline Proprietary Limited (ACN 005 968 310);
7. The Priceline Unit Trust (ABN 65 701 908 786);
8. Second Priceline Unit Trust (ABN 79 504 822 878);
9. API Services Australia Pty Ltd (ACN 166 626 428);
10. Australian Pharmaceutical Industries (Queensland) Pty Ltd (ACN 009 781 668);
11. API Victoria Pty Ltd (ACN 001 941 608);
12. API (Canberra) Pty Ltd (ACN 002 300 932);
13. Canberra Pharmaceutical Suppliers Trust (ABN 11 382 009 650);
14. Soul Pattinson (Manufacturing) Pty Ltd (ACN 000 026 031);
15. SiSU Wellness Pty Ltd (ACN 166 905 602);
16. API Financial Services Australia Pty Limited (ACN 103 954 294);
17. Making Life Easy - Mobility and Independent Living Superstore Pty Ltd (ACN 109 511 266);
18. M.L.E. Unit Trust (ABN 98 594 923 309);
19. Pharma-Pack Pty Ltd (ACN 000 655 550);
20. API Leasing Pty Ltd (ACN 628 549 333);
21. CSC Holdings Australia Pty Ltd (ACN 625 519 075);
22. CSC Products Pty Ltd (ACN 625 520 238);
23. CSC Franchising Pty Ltd (ACN 629 421 110);
24. API Owned CSC Pty Ltd (ACN 629 420 097);
25. CSC Shared Services Pty Ltd (ACN 629 624 817);
26. Clearskincare Clinics Australia Pty Ltd (ACN 608 881 170);
27. Clearskincare Clinics Payroll Pty Ltd (ACN 169 902 765);
28. Clearskincare Ventures Pty Ltd (ACN 627 348 190); and
29. Clearskincare Clinics Pty Ltd (ACN 169 437 790).

SCHEDULE 3

SCHEME OF ARRANGEMENT

Refer to attachment.



Scheme of Arrangement

Australian Pharmaceutical Industries Limited
ACN 000 004 320

Scheme Shareholders

2021

SCHEME OF ARRANGEMENT

Under section 411 of the Corporations Act

BETWEEN:

- (1) **Australian Pharmaceutical Industries Limited** (ACN 000 004 320) whose registered office is at Level 5, 250 Camberwell Road, Camberwell, Victoria 3124 (**API**); and
- (2) each Scheme Shareholder.

BACKGROUND:

- (A) API is a public company incorporated in Australia under the Corporations Act. It is registered in New South Wales and is a company limited by shares. API is admitted to the official list of ASX and API Shares are quoted on ASX.
- (B) Wesfarmers Limited (ACN 008 984 049) (**Wesfarmers**) is a public company incorporated in Australia under the Corporations Act. It is registered in Western Australia and is a company limited by shares. Wesfarmers is admitted to the official list of ASX and its fully paid ordinary shares are quoted on ASX.
- (C) WFM Investments Pty Ltd (ACN 651 355 501) (**Wesfarmers Sub**), a wholly-owned subsidiary of Wesfarmers, is registered in Western Australia and is a company limited by shares.
- (D) API, Wesfarmers Sub and Wesfarmers have agreed, by executing the Scheme Implementation Deed, to facilitate the implementation of this Scheme.
- (E) This Scheme attributes actions to Wesfarmers Sub but does not itself impose an obligation on it to perform those actions. Wesfarmers and Wesfarmers Sub covenant in favour of the Scheme Shareholders, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including to provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme.
- (F) If this Scheme becomes Effective:
 - (1) in consideration of the transfer of the Scheme Shares to Wesfarmers Sub, Wesfarmers Sub must provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme and the Deed Poll;
 - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Wesfarmers Sub; and
 - (3) API will enter the name of Wesfarmers Sub in the Register as the holder of all Scheme Shares.

OPERATIVE PROVISIONS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

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

API Shareholder means a person or persons (in the case of joint shareholdings) entered in the Register as a holder of API Shares.

API Withholding Amount Shareholder means a Scheme Shareholder in relation to whom Wesfarmers Sub determines (acting reasonably) that a Withholding Amount must be paid to the Commissioner in relation to the acquisition of API Shares from such API Withholding Amount Shareholder.

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ACN 008 624 691), as the context requires.

ASX Operating Rules means the operating rules of ASX.

ASX Settlement Rules means operating rules of the settlement facility provided by ASX Settlement Pty Ltd (ACN 008 504 532).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Victoria and Perth, Western Australia.

CHESS means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited (ACN 008 504 532), which provides for the electronic transfer, settlement and registration of securities.

CHESS Holding has the meaning given in the ASX Settlement Rules.

Commissioner means the Commissioner of Taxation of the Commonwealth of Australia.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing between API and Wesfarmers Sub.

Deed Poll means the deed poll under which Wesfarmers and Wesfarmers Sub covenant in favour of the Scheme Shareholders to perform the actions attributed to them under this Scheme.

Effective 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) of the Corporations Act in relation to this Scheme.

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

End Date has the meaning given in the Scheme Implementation Deed.

Excluded Shareholder means any API Shareholder who is a member of the Wesfarmers Group or any API Shareholder who holds any API Shares on behalf of, or for the benefit of, any member of the Wesfarmers Group and does not hold API Shares on behalf of, or for the benefit of, any other person.

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the ACCC, ASIC, ATO, ASX, any Office of State Revenue, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

Implementation Date has the meaning given in the Scheme Implementation Deed.

Issuer Sponsored Holding has the meaning given in the ASX Settlement Rules.

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

Register means the register of members of API maintained by API or the Registry in accordance with the Corporations Act.

Registered Address means, in relation to an API Shareholder, the address of the shareholder shown in the Register.

Registry means Boardroom Pty Limited (ACN 003 209 836).

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between API and Scheme Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed in writing between API and Wesfarmers Sub.

Scheme Consideration means the consideration to be provided by Wesfarmers Sub to each Scheme Shareholder for the transfer to Wesfarmers Sub of each Scheme Share, being \$1.55 cash for each API Share held by a Scheme Shareholder as at the Scheme Record Date, subject to and as adjusted in accordance with clause 2.3(c) of the Scheme Implementation Deed (if applicable).

Scheme Implementation Deed means the Scheme Implementation Deed between API, Wesfarmers Sub and Wesfarmers dated 8 November 2021 relating to the implementation of this Scheme.

Scheme Meeting means the meeting of API Shareholders (other than Excluded Shareholders) to be convened, as ordered by the Court under section 411(1) of the Corporations Act, to consider this Scheme and includes any adjournment or postponement of that meeting.

Scheme Record Date has the meaning given in the Scheme Implementation Deed.

Scheme Share means an API Share on issue as at the Scheme Record Date (other than an API Share recorded in the Register as at the Scheme Record Date as being held by Wesfarmers Sub).

Scheme Shareholder means an API Shareholder recorded in the Register as at the Scheme Record Date (other than Wesfarmers Sub), taking into account registration of any transfer or transmission application or other request received in accordance with clause 5.1.

Scheme Transfer means a duly completed and executed proper instrument of transfer of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Wesfarmers Sub as transferee, which may be a master transfer of all or part of the Scheme Shares.

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

TAA means the *Taxation Administration Act 1953* (Cth).

Total Withholding Amount means the aggregate Withholding Amounts in respect of all API Withholding Amount Shareholders.

Trust Account has the meaning given in clause 4.1(a)(i).

Wesfarmers has the meaning given in recital (B).

Wesfarmers Group means Wesfarmers and its subsidiaries.

Wesfarmers Sub has the meaning given in recital (C).

Withholding Amount means the amount that Wesfarmers Sub is required to pay to the Commissioner under Subdivision 14-D of Schedule 1 of the TAA in respect of the acquisition of any API Shares from a relevant Scheme Shareholder.

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **entity**, **officer** and **security interest** have the same meanings as given by the Corporations Act.
- (g) A reference to **\$** or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) A reference to time in this document is a reference to time in Melbourne, Victoria.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the next Business Day.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions precedent to this Scheme**

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00 am on the Second Court Date, all the conditions set out in clause 3.2 of the Scheme Implementation Deed, other than the condition in item 3 (Court approval of Scheme) of clause 3.2 of the Scheme Implementation Deed, having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) as at 8.00 am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms;
- (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 in writing between API and Wesfarmers Sub;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed in writing between API and Wesfarmers Sub having been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(1) of the Corporations Act, on or before the End Date (or any later date API and Wesfarmers Sub agree in writing).

2.2 **Certificate in relation to conditions precedent**

- (a) Before 8.00 am on the Second Court Date, each of API and Wesfarmers Sub must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court requests), confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 2.1(a) and 2.1(b) have been satisfied or waived.
- (b) A certificate provided under clause 2.2(a) constitutes conclusive evidence that the relevant conditions precedent have been fulfilled, waived or taken to be waived.

2.3 **Termination**

- (a) The Scheme will lapse and be of no further force or effect if:
 - (i) the Effective Date does not occur on or before the End Date; or
 - (ii) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with their terms,unless API and Wesfarmers Sub otherwise agree in writing.
- (b) Without limiting any rights under the Scheme Implementation Deed, in the event that the Scheme Implementation Deed is terminated in accordance with its terms

before 8.00 am on the Second Court Date, API and Wesfarmers Sub are each released from:

- (i) any further obligation to take steps to implement this Scheme; and
- (ii) any liability with respect to this Scheme.

3. **IMPLEMENTATION OF THIS SCHEME**

3.1 **Lodgement of Court orders with ASIC**

- (a) API must lodge with ASIC, in accordance with section 411(4)(b) of the Corporations Act, an office copy of the orders approving this Scheme as soon as practicable after the Court makes those orders, and in any event by no later than 4.00 pm on the first Business Day after those orders are made.
- (b) Subject to clause 2.3, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.2 **Transfer of Scheme Shares**

- (a) On the Implementation Date, subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.1(b) and 4.1(c), all the Scheme Shares (together with all rights and entitlements attaching to those shares as at the Implementation Date) must be transferred to Wesfarmers Sub, without the need for any further act by any Scheme Shareholder (other than acts performed by API or its directors and officers as agent and attorney of each Scheme Shareholder), by:
 - (i) API delivering to Wesfarmers Sub the duly completed Scheme Transfers executed by API or any of its directors and officers as agent and attorney of each Scheme Shareholder as transferor; and
 - (ii) Wesfarmers Sub duly executing the Scheme Transfers as transferee and, if necessary, attending to the stamping of the Scheme Transfers and delivering them to API for registration.
- (b) Immediately following receipt of the Scheme Transfers under clause 3.2(a)(ii), but subject to the stamping of the Scheme Transfers (if necessary), API must enter, or procure the entry of, the name and address of Wesfarmers Sub in the Register as the holder of all the Scheme Shares in accordance with this Scheme.

4. **SCHEME CONSIDERATION**

4.1 **Provision of Scheme Consideration**

- (a) Wesfarmers Sub must, by no later than the Business Day before the Implementation Date:
 - (i) deposit, or procure the deposit, in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders other than each Excluded Shareholder (less the Total Withholding Amount) into an Australian dollar denominated trust account operated by API as trustee for the Scheme Shareholders (other than each Excluded Shareholder) (**Trust Account**) (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Wesfarmers Sub's account; and
 - (ii) provide written confirmation to API of that deposit.

- (b) On the Implementation Date, subject to funds having been deposited in the manner contemplated by clause 4.1(a)(i), API must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder (other than each Excluded Shareholder) from the Trust Account.
- (c) The obligations of API under clause 4.1(b) will be satisfied by API (in its absolute discretion, and despite any election referred to in clause 4.1(c)(i) or authority referred to in clause 4.1(c)(ii) made or given by the Scheme Shareholder):
- (i) if a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from API by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to API; or
 - (iii) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.2).
- (d) To the extent that, following satisfaction of API's obligations under clause 4.1(b), there is a surplus in the amount held by API as trustee for the Scheme Shareholders in the Trust Account, that surplus must be paid by API to Wesfarmers Sub.
- (e) Wesfarmers Sub will remit the Total Withholding Amount to the Commissioner.

4.2 **Joint holders**

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.1(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of API, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of API, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

4.3 **Fractional entitlements**

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder (other than each Excluded Shareholder) would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.

4.4 **Unclaimed monies**

- (a) API may cancel a cheque issued under this clause 4 if the cheque:
 - (i) is returned to API; 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 Shareholder to API (or the Registry) (which request may not be made until the date which is 30 Business Days after the Implementation Date), API must reissue a cheque that was previously cancelled under this clause 4.4.
- (c) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).
- (d) Any interest or other benefit accruing from the unclaimed Scheme Consideration will be to the benefit of Wesfarmers Sub.

4.5 **Orders of a court or Government Agency**

If written notice is given to API (or the Registry) or Wesfarmers Sub of an order or direction made by a court of competent jurisdiction or by another a Government Agency that:

- (a) 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 Scheme Shareholder (other than each Excluded Shareholder), which would otherwise be payable or required to be issued to that Scheme Shareholder by API in accordance with this clause 4, then API shall be entitled to procure that payment is made in accordance with that order or direction; or
- (b) prevents API from providing consideration to any particular Scheme Shareholder (other than each Excluded Shareholder) in accordance with this clause 4, or the payment of such consideration is otherwise prohibited by applicable law, API will be entitled to retain an amount, in Australian dollars, equal to the amount which would otherwise be payable to that Scheme Shareholder until such time as payment in accordance with this clause 4 is permitted by that (or another) order or direction or otherwise by law,

and the payment or retention by API (or the Registry) will constitute the full discharge of API's obligations under this clause 4 with respect to the amount so paid or retained (in the case of 4.5(b), until it is no longer required to be retained).

5. **DEALINGS IN API SHARES**

5.1 **Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in API Shares or other alterations to the Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant API Shares before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Scheme Record Date at the place where the Register is kept,

and API must not accept for registration, nor recognise for any purpose (except a transfer to Wesfarmers Sub pursuant to this Scheme and any subsequent transfer by Wesfarmers Sub or its successors in title), 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.

5.2 **Register**

- (a) API must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 5.1(b) before the Scheme Record Date, provided that, for the avoidance of doubt, nothing in this clause 5.2 requires API to register a transfer that would result in an API Shareholder holding a parcel of API Shares that is less than a 'marketable parcel' (as defined in the ASX Operating Rules).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that Scheme Shareholder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and API shall be entitled to disregard any such disposal or dealing.
- (c) For the purpose of determining entitlements to the Scheme Consideration, API must maintain the Register in accordance with the provisions of this clause 5.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for API Shares (other than statements of holding in favour of Wesfarmers Sub or any Excluded Shareholders) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Register (other than entries on the Register in respect of Wesfarmers Sub or any Excluded Shareholders) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (e) As soon as practicable after the Scheme Record Date, and in any event by 5.00 pm on the first Business Day after the Scheme Record Date, API will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Register as at the Scheme Record Date are available to Wesfarmers Sub in the form Wesfarmers Sub reasonably requires.

5.3 **Quotation of API Shares**

- (a) API must apply to ASX to suspend trading on ASX in API Shares with effect from close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Wesfarmers Sub, API must apply:
 - (i) for termination of the official quotation of API Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

6. **GENERAL PROVISIONS**

6.1 **API giving effect to this Scheme**

API must do anything (including execute any document) that is necessary to give effect to the Scheme and the transactions contemplated by it. Without limiting API's power under this Scheme, API has power to do all things that it considers necessary to give effect to this Scheme and the Scheme Implementation Deed.

6.2 **Scheme Shareholders' agreements, consents and warranties**

- (a) Each Scheme Shareholder:
 - (i) irrevocably agrees to the transfer of its API Shares, together with all rights and entitlements attaching to those Scheme Shares, to Wesfarmers Sub in accordance with this Scheme;
 - (ii) agrees to the variation, cancellation or modification of the rights attached to its API Shares constituted by or resulting from this Scheme;
 - (iii) agrees to, on the direction of Wesfarmers Sub, destroy any statements of holding or share certificates relating to its API Shares;
 - (iv) who holds its API Shares in a CHESS Holding agrees to the conversion of those API Shares to an Issuer Sponsored Holding and irrevocably authorises API to do anything necessary, expedient or incidental (whether required by the ASX Settlement Rules or otherwise) to effect or facilitate such conversion; and
 - (v) acknowledges and agrees that this Scheme binds API and all API Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).
- (b) Each Scheme Shareholder is taken to have warranted to API and Wesfarmers Sub on the Implementation Date, and appointed and authorised API as its agent and attorney to warrant to Wesfarmers Sub on the Implementation Date, that:
 - (i) all of its Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the PPSA) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that it has full power and capacity to transfer its Scheme Shares to Wesfarmers Sub together with any rights and entitlements attaching to those Scheme Shares; and
 - (ii) it has full power and capacity to sell and to transfer its Scheme Shares (including any rights and entitlements attaching to those shares) to Wesfarmers Sub under this Scheme.
- (c) API undertakes that it will provide such warranty in clause 6.2(b) to Wesfarmers Sub as agent and attorney of each Scheme Shareholder.

6.3 **Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Wesfarmers Sub will, at the time of transfer of them to Wesfarmers Sub, vest in Wesfarmers Sub free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the PPSA) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder (other than each Excluded Shareholder) in the manner contemplated by clauses 4.1(b) and 4.1(c), Wesfarmers Sub will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by API of Wesfarmers Sub in the Register as the holder of the Scheme Shares.

6.4 **Appointment of API as attorney of Scheme Shareholders**

Each Scheme Shareholder without the need for any further act, irrevocably appoints API and each of its directors and officers, jointly and severally, on and from the Effective Date, as the Scheme Shareholder's agent and attorney:

- (a) to execute any document or do any other act necessary, expedient or incidental to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing and delivering any Scheme Transfer; and
- (b) to enforce the Deed Poll against Wesfarmers and Wesfarmers Sub (and API undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Wesfarmers and Wesfarmers Sub on behalf of and as agent and attorney of each Scheme Shareholder),

and API accepts such appointment. API may as agent and attorney of each Scheme Shareholder sub-delegate any of its functions, authorities or powers under this clause 6.4 to all or any of its directors and officers (jointly, severally, or jointly and severally).

6.5 **Appointment of Wesfarmers Sub as attorney in respect of Scheme Shares**

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clauses 4.1(b) and 4.1(c) until Wesfarmers Sub is registered as the holder of all Scheme Shares, each Scheme Shareholder:

- (a) irrevocably appoints Wesfarmers Sub as its agent and attorney (and irrevocably appoints Wesfarmers Sub as its agent and attorney to appoint any of the directors and officers nominated by Wesfarmers Sub as its agent and attorney) to:
 - (i) appoint the chair of the board of directors of API and, where applicable, corporate representative to attend API Shareholders' meetings;
 - (ii) exercise the votes attaching to the API Shares registered in the name of the Scheme Shareholder; and
 - (iii) sign any API Shareholders' resolution;
- (b) must not attend or vote at any API Shareholders' meetings or sign any API Shareholders' resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause 6.5(a)(iii); and
- (c) must take all other action in the capacity of a registered holder of Scheme Shares as Wesfarmers Sub reasonably directs.

6.6 **Binding effect of Scheme**

This Scheme binds API and all API Shareholders from time to time, including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme (and, to the extent of any inconsistency, this Scheme overrides API's constituent documents).

6.7 **Alteration or condition to Scheme**

If the Court proposes to approve this Scheme subject to any alteration or condition:

- (a) API may, by its counsel, but subject to the prior approval of Wesfarmers Sub (which may not be unreasonably withheld or delayed), consent on behalf of all persons concerned to those alterations or conditions; and

- (b) each Scheme Shareholder agrees to any such alterations or conditions which API has consented to.

6.8 No liability when acting in good faith

Each Scheme Shareholder agrees that neither API, Wesfarmers, Wesfarmers Sub nor any director, officer or employee of any of those companies shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

6.9 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to API, it will be deemed to be received on the date (if any) on which it is actually received at the registered of API or the Registry and on no other date.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an API Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

6.10 Costs and stamp duty

- (a) Subject to clause 6.10(b), API will pay all the costs of this Scheme.
- (b) Wesfarmers Sub will pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll.
- (c) Wesfarmers Sub will indemnify each Scheme Shareholder against liability arising from a failure to comply with clause 6.10(b).

6.11 Governing law

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of Victoria, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document. Each party irrevocably waives any right it has to object to any legal process being brought in those courts including any claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

SCHEDULE 4

DEED POLL

Refer to attachment.



EXECUTION VERSION

Deed Poll

Wesfarmers Limited

ACN 008 984 049

WFM Investments Pty Ltd

ACN 651 355 501

2021

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules for interpreting this document.....	1
1.3 Nature of deed poll	1
2. CONDITIONS PRECEDENT AND TERMINATION	2
2.1 Conditions precedent.....	2
2.2 Termination	2
2.3 Consequences of termination	2
3. WESFARMERS AND WESFARMERS SUB COVENANTS	2
4. WARRANTIES	2
5. CONTINUING OBLIGATIONS.....	3
6. NOTICES	3
6.1 How to give a notice	3
6.2 When a notice is given	4
6.3 Address for notices	4
7. GENERAL	5
7.1 Wesfarmers and Wesfarmers Sub giving effect to this document.....	5
7.2 Costs and stamp duty.....	5
7.3 Amendment or variation	5
7.4 Assignment.....	5
7.5 Variation of rights	5
7.6 Operation of this document.....	6
7.7 Governing law	6

THIS DEED POLL is made on

2021

BY:

Wesfarmers Limited (ACN 008 984 049) whose registered office is at Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000 (**Wesfarmers**); and

WFM Investments Pty Ltd (ACN 651 355 501) whose registered office is at Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000 (**Wesfarmers Sub**)

FOR THE BENEFIT OF:

Scheme Shareholders

RECITALS:

- (A) Australian Pharmaceutical Industries Limited (ACN 000 004 320) (**API**), Wesfarmers Sub and Wesfarmers have agreed, by executing a Scheme Implementation Deed dated 8 November 2021 (**Scheme Implementation Deed**), to facilitate the implementation of the Scheme.
- (B) In the Scheme Implementation Deed, Wesfarmers Sub agreed to make this deed poll and to procure that Wesfarmers make this deed poll.
- (C) The Scheme attributes actions to Wesfarmers Sub but does not itself impose an obligation on it to perform those actions. Each of Wesfarmers and Wesfarmers Sub covenant in favour of the Scheme Shareholders (other than the Excluded Shareholders), by executing this deed poll, to perform the actions attributed to them under the Scheme, including to provide or procure the provision of the Scheme Consideration in accordance with the terms of the Scheme.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

Words and expressions that are defined in the Scheme Implementation Deed, other than words and expressions defined in this document, have the same meaning in this document as given to them in the Scheme Implementation Deed, unless the context makes it clear that a definition is not intended to apply.

1.2 Rules for interpreting this document

The rules in clause 1.2 of the Scheme Implementation Deed apply in interpreting this document, unless the context makes it clear that a rule is not intended to apply.

1.3 Nature of deed poll

Wesfarmers and Wesfarmers Sub acknowledge that:

- (a) this document is a deed poll and may be relied on and enforced by any Scheme Shareholder (other than any Excluded Shareholder) in accordance with its terms even though the Scheme Shareholders are not parties to it; and
- (b) under the Scheme, each Scheme Shareholder (other than each Excluded Shareholder) irrevocably appoints API and each of its directors and officers, jointly

and severally, as its agent and attorney to enforce this document against Wesfarmers and Wesfarmers Sub.

2. **CONDITIONS PRECEDENT AND TERMINATION**

2.1 **Conditions precedent**

This document and the obligations of Wesfarmers and Wesfarmers Sub under this document are subject to the Scheme becoming Effective.

2.2 **Termination**

The obligations of Wesfarmers and Wesfarmers Sub under this document to the Scheme Shareholders (other than the Excluded Shareholders) will automatically terminate and the terms of this document will be of no force or effect if:

- (a) the Scheme is not Effective on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms, unless API, Wesfarmers and Wesfarmers Sub otherwise agree in writing.

2.3 **Consequences of termination**

If this document terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Wesfarmers and Wesfarmers Sub are released from their obligations to further perform this document except those obligations under clause 7.2; and
- (b) each Scheme Shareholder (other than each Excluded Shareholder) retains the rights, powers or remedies it has against Wesfarmers and Wesfarmers Sub in respect of any breach of this document which occurred before it was terminated.

3. **WESFARMERS AND WESFARMERS SUB COVENANTS**

Subject to clause 2, each of Wesfarmers and Wesfarmers Sub covenants in favour of each Scheme Shareholder (other than each Excluded Shareholder) to:

- (a) by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders (other than the Excluded Shareholders) into an Australian dollar denominated trust account operated by API as trustee for the Scheme Shareholders (other than the Excluded Shareholders and provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Wesfarmers Sub's account); and
- (b) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme,

subject to and in accordance with the terms of the Scheme.

4. **WARRANTIES**

Each of Wesfarmers and Wesfarmers Sub represents and warrants in favour of each Scheme Shareholder (other than the Excluded Shareholders) that:

- (a) **(status)** it is a validly existing corporation registered under the laws of the place of its incorporation;

- For personal use only
- (b) **(power)** it has full legal capacity and power to enter into this document and carry out the transactions that this document contemplates in accordance with its terms;
 - (c) **(corporate authority)** it has taken all corporate action that is necessary to authorise it entering into this document and has taken or will take all necessary corporation action to carry out the transactions that this document contemplates in accordance with its terms;
 - (d) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
 - (e) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that this document contemplates in accordance with its terms; and
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence, and it is complying with any conditions to which any such Authorisation is subject;
 - (f) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that it contemplates in accordance with its terms, does or will contravene:
 - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) any Authorisation held by it;
 - (iii) any undertaking or instrument binding on it or any of its property; or
 - (iv) its constituent documents; and
 - (g) **(no Insolvency Event)** neither it nor any of its subsidiaries is affected by an Insolvency Event.

5. CONTINUING OBLIGATIONS

This document is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

- (a) Wesfarmers and Wesfarmers Sub having fully performed their obligations under this document; or
- (b) termination of this document under clause 2.

6. NOTICES

6.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or

- (ii) sent by email.

6.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail, three Business Days after posting; or
- (b) if it is sent by email, the earlier of:
 - (i) the time that the sender receives an automated notification that the email was successfully transmitted and read by the recipient;
 - (ii) the time that the recipient responds by reply email; or
 - (iii) four hours after the email was sent (as recorded on the device from which the sender sent the email),

provided that no notice of failure of transmission or other error message is received by the sender.

6.3 Address for notices

A person's address for notices are those set out below, or as the person notifies the sender:

Party	Attention	Address	Email
API	Anne Mustow, General Counsel and Company Secretary	Level 5, 250 Camberwell Road, Camberwell, Victoria 3124	
with a copy to (such copy not to constitute notice)	Elspeth Arnold, Partner Andrew Kim, Partner	Level 16, 80 Collins Street, South Tower, Melbourne, Victoria 3000	
Wesfarmers	Ed Bostock, Managing Director, Business Development	Level 14, Brookfield Place, 123 St Georges Terrace, Perth, Western Australia 6000	
with a copy to (such copy not to constitute notice)	Adam Charles, Partner Baden Furphy, Partner	Level 22, 80 Collins Street, Melbourne, Victoria 3000	
Wesfarmers Sub	Ed Bostock, Managing Director, Business Development	Level 14, Brookfield Place, 123 St Georges Terrace, Perth,	

Party	Attention	Address	Email
		Western Australia 6000	
with a copy to (such copy not to constitute notice)	Adam Charles, Partner Baden Furphy, Partner	Level 22, 80 Collins Street, Melbourne, Victoria 3000	

7. GENERAL

7.1 Wesfarmers and Wesfarmers Sub giving effect to this document

Wesfarmers and Wesfarmers Sub must do anything (including execute any document) that is necessary to give effect to this document and the transactions contemplated by it.

7.2 Costs and stamp duty

Wesfarmers Sub will:

- (a) pay its own expenses incurred in negotiating, preparing, executing and registering this document;
- (b) pay all stamp duty and any related fines and penalties in respect of the Scheme and this document, the performance of this document and each transaction effected by or made under the Scheme and this document; and
- (c) indemnify each Scheme Shareholder (other than the Excluded Shareholders) against liability arising from a failure to comply with clause 7.2(b).

7.3 Amendment or variation

A provision of this document may not be amended or varied unless:

- (a) before the First Court Date, the amendment or variation is agreed to in writing by API; or
- (b) on or after the First Court Date, the amendment or variation is agreed to in writing by API and the Court indicates that the amendment or variation would not of itself preclude or otherwise prevent approval of the Scheme,

in which event Wesfarmers and Wesfarmers Sub must execute a further deed poll in favour of the Scheme Shareholders (other than the Excluded Shareholders) giving effect to that amendment or variation.

7.4 Assignment

- (a) The rights created by this document are personal to Wesfarmers, Wesfarmers Sub and each Scheme Shareholder (excluding each Excluded Shareholder) and must not be dealt with at law or in equity without the prior written consent of Wesfarmers and Wesfarmers Sub.
- (b) Any purported dealing in contravention of clause 7.4(a) is invalid.

7.5 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

7.6 Operation of this document

- (a) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

7.7 Governing law

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of Victoria, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document. Each party irrevocably waives any right it has to object to any legal process being brought in those courts including any claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

7.8 Joint and several obligations

Wesfarmers and Wesfarmers Sub are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

EXECUTED as a deed poll.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SIGNED, SEALED AND DELIVERED by
WESFARMERS LIMITED:

Signature of director

Signature of director/secretary

Name

Name

For personal use only

SIGNED, SEALED AND DELIVERED by
WFM INVESTMENTS PTY LTD:

Signature of director

Name

Signature of director/secretary

Name

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SIGNED, SEALED AND DELIVERED by
AUSTRALIAN PHARMACEUTICAL
INDUSTRIES LIMITED:

[Redacted signature area]

Signature of director

Kenneth Gunderson-Briggs

Name

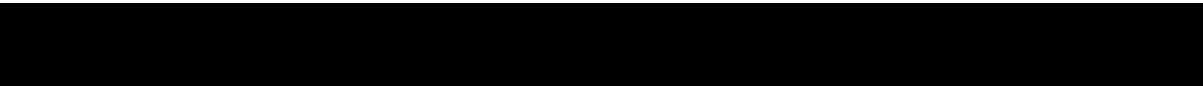
Signature of director/secretary

Richard Vincent

Name

For personal use only

SIGNED, SEALED AND DELIVERED by
WFM INVESTMENTS PTY LTD:



Signature of director

Rob Scott

Name

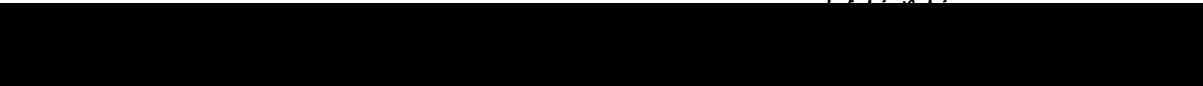
Signature of director/secretary

vicki Robinson

Name

For personal use only

SIGNED, SEALED AND DELIVERED by
WESFARMERS LIMITED:



Signature of director

Rob Scott

Name

Signature of director/secretary

vicki Robinson

Name

For personal use only