

## WAM Capital and Ozgrowth set to merge

23 December 2021  
ASX announcement

WAM Capital Limited (WAM Capital) (ASX: WAM) and Ozgrowth Limited (Ozgrowth) (ASX: OZG) are pleased to announce that they have entered into a Scheme Implementation Agreement (annexed to this announcement) to merge the two entities (**Proposed Transaction**).

Under the Proposed Transaction, WAM Capital will acquire 100% of the shares in Ozgrowth that it does not currently own through a scheme of arrangement (**Scheme**). Under the Scheme, Ozgrowth shareholders will receive new WAM Capital shares as consideration for their Ozgrowth shares. The number of WAM Capital shares to be offered for each Ozgrowth share will be determined by a formula based on the ratio of the share price of WAM Capital to the net tangible assets (**NTA**) of Ozgrowth before tax (**pre-tax NTA**). Using the share price of WAM Capital and the pre-tax NTA of Ozgrowth at 30 November 2021 as an example<sup>1</sup>, Ozgrowth shareholders would receive 0.168 new WAM Capital shares for each Ozgrowth share they hold under the Proposed Transaction, with an indicative market value of \$0.372 per Ozgrowth share, representing a 32.8% uplift over the closing price of Ozgrowth on that day.

It is the intention of the WAM Capital Board of Directors to ensure that all Ozgrowth shareholders receiving WAM Capital shares issued under the Scheme will be eligible to receive the WAM Capital FY2022 fully franked interim dividend. A condition of the Proposed Transaction is that Ozgrowth will not pay an interim dividend and consequently the dividend target for Ozgrowth is withdrawn.

WAM Capital has today announced a similar transaction involving Westoz Investment Company Limited (ASX: WIC). The Proposed Transaction is independent of that transaction and the two transactions are not inter-conditional. The Proposed Transaction will proceed whether or not the transaction between WAM Capital and Westoz Investment Company Limited proceeds and vice versa.

WAM Capital Chairman Geoff Wilson AO said: "The WAM Capital Board of Directors believe the merged entity under the Scheme will provide both Ozgrowth and WAM Capital shareholders with appealing benefits. We look forward to welcoming Ozgrowth shareholders to the Wilson Asset Management family."

### Ozgrowth Board's Recommendation

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

Ozgrowth Chairman Jay Hughes said: "We believe the Proposed Transaction offers our investors the opportunity to better realise the underlying value in their holdings, with WAM Capital shares offering greater liquidity and closer alignment to the underlying asset value in a vehicle that has a similarly successful investment track record to Ozgrowth".

<sup>1</sup> Based on WAM Capital's closing share price of \$2.22 per share, Ozgrowth's pre-tax NTA of \$0.346 per share and Ozgrowth's closing share price of \$0.28 per share on 30 November 2021. The implied value of the Offer depends on the value of WAM Capital's share price and the Ozgrowth pre-tax NTA at the Calculation Date and the WAM Capital share price at the time the Scheme consideration is issued (on the Implementation Date), and could be higher or lower than the example used.

## Key benefits of the Proposed Transaction

The Proposed Transaction offers substantial benefits for Ozgrowth shareholders including:

- the ability to exit their investment in Ozgrowth at premium to the stated pre-tax NTA backing of the company and a premium to the share price of Ozgrowth;
- Wilson Asset Management's investment expertise and experience;
- Wilson Asset Management's commitment to shareholder engagement;
- WAM Capital's track record of investment portfolio performance; and
- WAM Capital's greater market capitalisation and on-market liquidity.

If the Proposed Transaction proceeds, it will create a single listed investment company with a larger capital and shareholder base. The merged entity will have:

- stable and clearly articulated investment strategy and a proven investment manager with a track record of providing investment portfolio performance for shareholders since inception in August 1999;
- the removal of duplication of expenses such as ASX listing fees, share registry fees, audit fees, compliance costs and other public listed company costs, as well as a larger pool of assets to spread the expenses across;
- a share price which has historically traded at a premium to the company's pre-tax NTA; and
- a pre-tax NTA of approximately \$1,801.6 million (based on the reported 30 November 2021 NTAs of WAM Capital and Ozgrowth) and approximately 44,000 shareholders.

## Scheme Consideration and Conditions Precedent

As consideration for their Ozgrowth shares under the Scheme, Ozgrowth shareholders will receive new WAM Capital shares as consideration for their Ozgrowth shares. The number of WAM Capital shares to be offered for each Ozgrowth share will be determined by a formula, based on the ratio of the volume weighted average share price of WAM Capital on the calculation date and a 7.5% premium to the pre-tax NTA of Ozgrowth. The indicative calculation date for this ratio is 31 March 2022, subject to any adjustments required by ASIC or ASX. It is a condition precedent that at the calculation date, the Ozgrowth pre-tax NTA has not fallen more than 10% compared to the Ozgrowth pre-tax NTA most recently announced on the ASX prior to the date of this announcement and the WAM Capital share price premium to NTA remaining between 12.5% and 25.0%.

## Scheme Implementation Agreement and indicative timeline

WAM Capital and Ozgrowth have entered into the attached Scheme Implementation Agreement, which contains the terms and conditions on which WAM Capital and Ozgrowth will implement the Proposed Transaction. The Scheme Implementation Agreement includes a number of customary clauses and is subject to conditions precedent including Ozgrowth shareholders approving the Scheme, the independent expert concluding that the Proposed Transaction is in the best Interests of Ozgrowth shareholders and the Supreme Court of Western Australia approving the Scheme.

It is currently anticipated that Ozgrowth shareholders will be given the opportunity to vote on the Scheme at a meeting expected to be held on 4 April 2022. Detailed information relating to the Scheme will be set out in the Scheme Booklet, which is expected to be sent to Ozgrowth shareholders by the end of March 2022.

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

Event	Expected date
First Court date	28 February 2022
Scheme Booklet sent to Ozgrowth shareholders	By 4 March 2022
Calculation date for exchange ratio	31 March 2022
Scheme Meeting	4 April 2022
Second Court date	8 April 2022
Effective date	11 April 2022
Record date	13 April 2022
Implementation date	21 April 2022

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

### Contact details and advisors

Ozgrowth is being advised by Steinepreis Paganin as legal adviser. For further information, please contact [admin@westozfunds.com.au](mailto:admin@westozfunds.com.au).

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

#### Chief Financial Officer & Company Secretary

Jesse Hamilton  
T: +61 401 944 807  
E: [jesse@wilsonassetmanagement.com.au](mailto:jesse@wilsonassetmanagement.com.au)

#### Senior Corporate Affairs Advisor

Olivia Harris  
T: (02) 9247 6755  
E: [olivia@wilsonassetmanagement.com.au](mailto:olivia@wilsonassetmanagement.com.au)

This announcement has been authorised by the boards of WAM Capital Limited and Ozgrowth Limited.

### About Ozgrowth Limited

Ozgrowth Limited (ASX: OZG) is a listed investment company based in Perth. The Company's objective is to generate a positive return over the medium to long-term, regardless of the movements of the broader share market, from an actively managed portfolio of small cap ASX listed and unlisted investments, and provide shareholders with a consistent stream of dividends.

Since inception in 2008 when an initial \$80 million was raised, the portfolio has generated a return before fees and taxes of 12.2% per annum (6.7% per annum above the S&P/ASX All Ordinaries Accumulation Index) and paid \$44 million in fully franked dividends to shareholders. The Company's portfolio is managed by Westoz Funds Management Pty Ltd (AFSL 285607), a 100% owned subsidiary of Euroz Hartleys Group Limited.

## About WAM Capital

WAM Capital Limited (ASX: WAM) is a listed investment company (LIC) managed by Wilson Asset Management. Listed in August 1999, WAM Capital provides investors with exposure to an actively managed, diversified portfolio of undervalued growth companies listed on the ASX, with a focus on small-to-medium sized businesses. The Company's investment objectives are to deliver a stream of fully franked dividends, provide capital growth and preserve capital.

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



## About Wilson Asset Management

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

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



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

**Geoff Wilson AO**  
Chairman &  
Chief Investment Officer  
(02) 9247 6755

**Kate Thorley**  
Chief Executive Officer  
(02) 9247 6755  
0405 115 644

**Jesse Hamilton**  
Chief Financial Officer  
(02) 9247 6755  
0401 944 807

**Martyn McCathie**  
Head of Operations and Key  
Account Manager  
(02) 9247 6755  
0433 312 603

# Scheme Implementation Agreement

## BETWEEN

WAM Capital Limited (ACN 086 587 395) (**WAM  
Capital**)

## AND

Ozgrowth Limited (ACN 126 450 271)  
(**Ozgrowth**)

## MILLS OAKLEY

Level 7, 151 Clarence Street  
SYDNEY NSW 2000

Telephone: +61 2 8289 5800

Facsimile: +61 2 9247 1315

DX 13025, SYDNEY MARKET STREET

[www.millsoakley.com.au](http://www.millsoakley.com.au)

Ref: LYRS/3548471

## Table of Contents

<b>Details</b>	<b>1</b>
<b>General Terms</b>	<b>2</b>
<b>1 Definitions and interpretation</b>	<b>2</b>
1.1 Definitions	2
1.2 General interpretation	12
<b>2 Agreement to propose and implement Scheme</b>	<b>13</b>
2.1 Ozgrowth to propose Scheme	13
2.2 Agreement to implement Scheme	13
<b>3 Conditions Precedent</b>	<b>13</b>
3.1 Conditions Precedent to the Scheme	13
3.2 Reasonable endeavours	15
3.3 Regulatory matters	15
3.4 Waiver of Conditions Precedent	16
3.5 Notices in relation to Conditions Precedent	16
3.6 Deferral of Second Court Date	17
3.7 Consultation on failure of Condition Precedent	17
3.8 Failure to agree	17
<b>4 Outline of Scheme</b>	<b>18</b>
4.1 Scheme	18
4.2 Scheme Consideration	18
4.3 New WAM Capital Shares to rank equally	18
4.4 No amendment to the Scheme without consent	19
4.5 WAM Capital Permitted Dividend	19
4.6 Ozgrowth dividend prohibited other than in certain circumstances	19
<b>5 Implementation</b>	<b>20</b>
5.1 General obligations	20
5.2 Ozgrowth's obligations	20
5.3 WAM Capital's obligations	24
5.4 Scheme Booklet responsibility statement	26
5.5 Disagreement on content of Scheme Booklet	26
5.6 Verification	26
5.7 Conduct of Court proceeding	26
5.8 Appeal process	26
5.9 No partnership or joint venture	27
5.10 Ownership of Names	27
<b>6 Ozgrowth Director recommendation</b>	<b>27</b>
6.1 Best endeavours	27
6.2 Withdrawal or change of recommendation	28
<b>7 Directors</b>	<b>28</b>
7.1 Release of WAM Capital Indemnified Parties	28
7.2 Release for Ozgrowth Indemnified Parties	28
7.3 Appointment/retirement of Ozgrowth directors	29
7.4 Directors' and officers' indemnities and insurance	29
7.5 Period of undertaking	30
7.6 Benefit of undertaking for Ozgrowth	30

<b>8</b>	<b>Conduct of business .....</b>	<b>30</b>
8.1	Overview .....	30
8.2	Ozgrowth specific obligations.....	31
8.3	Ozgrowth prohibited actions .....	31
8.4	Exceptions to conduct of business provisions .....	32
8.5	Consultation with WAM Capital .....	32
8.6	Access to people and Ozgrowth Information.....	32
8.7	Facilitation .....	33
<b>9</b>	<b>Exclusivity .....</b>	<b>33</b>
9.1	No existing discussions.....	33
9.2	No-shop.....	33
9.3	No-talk .....	33
9.4	Due diligence information .....	34
9.5	Exceptions .....	34
9.6	Further exceptions .....	34
9.7	Notice of unsolicited approach .....	34
9.8	Matching right .....	35
9.9	WAM Capital counterproposal .....	36
9.10	Legal advice .....	36
<b>10</b>	<b>Representations and warranties .....</b>	<b>36</b>
10.1	Ozgrowth's representations and warranties .....	36
10.2	Ozgrowth's indemnity.....	39
10.3	Ozgrowth's knowledge or awareness.....	39
10.4	Qualifications on Ozgrowth's representations, warranties and indemnities .....	39
10.5	WAM Capital's representations and warranties.....	39
10.6	WAM Capital's indemnity .....	41
10.7	WAM Capital's knowledge or awareness .....	41
10.8	Qualifications on WAM Capital's representations, warranties and indemnities .....	41
10.9	Limitations of liability .....	42
<b>11</b>	<b>Termination.....</b>	<b>42</b>
11.1	Termination events .....	42
11.2	Termination.....	43
11.3	Effect of Termination.....	43
11.4	Damages .....	43
<b>12</b>	<b>Public announcements .....</b>	<b>43</b>
12.1	Public announcement of Transaction .....	43
12.2	Required disclosure .....	43
12.3	Other announcements .....	44
<b>13</b>	<b>Confidential Information .....</b>	<b>44</b>
13.1	Confidentiality agreement .....	44
13.2	Survival of obligations.....	44
<b>14</b>	<b>Notices and other communications .....</b>	<b>44</b>
14.1	Form .....	44
14.2	Delivery .....	44
14.3	When effective .....	44
14.4	When taken to be received .....	45
14.5	Receipt outside business hours .....	45



<b>15</b>	<b>GST</b> .....	<b>45</b>
15.1	Definitions and interpretation .....	45
15.2	GST exclusive .....	45
15.3	Payment of GST .....	45
15.4	Adjustment events .....	46
15.5	Reimbursements.....	46
<b>16</b>	<b>Costs</b> .....	<b>46</b>
16.1	Costs .....	46
16.2	Stamp duty and registration fees .....	46
<b>17</b>	<b>General</b> .....	<b>46</b>
17.1	Variation and waiver .....	46
17.2	Consents, approvals or waivers .....	46
17.3	Discretion in exercising rights .....	46
17.4	Partial exercising of rights.....	47
17.5	Conflict of interest.....	47
17.6	Remedies cumulative .....	47
17.7	Indemnities and reimbursement obligations .....	47
17.8	Inconsistent law .....	47
17.9	Supervening law .....	47
17.10	Counterparts.....	47
17.11	Entire agreement .....	47
17.12	Further steps .....	47
17.13	Cooperation.....	48
17.14	No liability for loss.....	48
17.15	Severability .....	48
17.16	Rules of construction .....	48
17.17	Assignment.....	48
17.18	Enforceability .....	48
17.19	No representation or reliance.....	48
<b>18</b>	<b>Governing law</b> .....	<b>49</b>
18.1	Governing law and jurisdiction .....	49
18.2	Serving documents.....	49
<b>Schedule 1</b>	<b>Timetable (clause 5.1)</b> .....	<b>50</b>
<b>Signing page</b> .....		<b>51</b>
<b>Annexure A</b>	<b>Public Announcement</b> .....	<b>52</b>
<b>Annexure B</b>	<b>Scheme of Arrangement</b> .....	<b>53</b>
<b>Annexure C</b>	<b>Deed Poll</b> .....	<b>54</b>



## Details

<b>Date</b>	<b>22 December 2021</b>	
<b>Parties</b>	<b>WAM Capital and Ozgrowth</b>	
<b>WAM Capital</b>	Name	WAM Capital Limited
	ACN	086 587 395
	Address	Level 26, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
	Email	jesse@wilsonassetmanagement.com.au
	Attention	Jesse Hamilton
<b>Ozgrowth</b>	Name	Ozgrowth Limited
	ACN	126 450 271
	Address	Level 18, Alluvion, 58 Mounts Bay Road, Perth WA 6000
	Email	prees@westozfunds.com.au
	Attention	Phil Rees
<b>Governing law</b>	Western Australia, Australia	
<b>Recitals</b>	A.	WAM Capital and Ozgrowth have agreed to implement the Transaction.
	B.	To implement the Transaction, Ozgrowth has agreed to propose the Scheme.
	C.	WAM Capital and Ozgrowth have agreed to implement the Scheme on the terms and conditions of this agreement.

## General Terms

### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

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

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

**ATO** means the Australian Taxation Office.

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

**Calculation Date** means:

- (a) 5:00pm (Sydney time) on 31 March 2022; or
- (b) otherwise, such other time and date as the parties agree in writing.

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

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

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

**Confidentiality Agreement** means the confidentiality agreement dated 18 November 2021 between WAM Capital and Ozgrowth.

**Confirmed** means the amounts agreed between the parties in writing. If the parties cannot agree these amounts within 2 Business Days, the calculations must be referred immediately by the parties to the auditor of the party whose NTA or VWAP (respectively) is subject of the calculation, to provide certification of the amount to the standard prescribed by Accounting Standard on Review Engagements ASRE 2410 "Review of a Financial Report Performed by the Independent Auditor of the Entity", within 1 Business Day of the referral, and **Confirm** has a corresponding meaning.

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

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

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

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

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

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

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

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

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

**Effective** when used in relation to the Scheme, means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but not before an office copy of the order of the Court is lodged with ASIC.

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

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

**End Date** means 31 May 2022 or such other date agreed by WAM Capital and Ozgrowth in writing.

**Euroz** means Euroz Hartleys Limited (ACN 104 195 057).

**Euroz Securities** means Euroz Hartleys Securities Limited (ACN 089 314 983).

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

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

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

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

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

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

**Implementation Date** means the 4<sup>th</sup> Business Day following the Record Date, or such other date after the Record Date as the parties agree in writing.

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

**Independent Expert** means BDO Corporate Finance (WA) Pty Ltd (ACN 124 031 045).

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

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

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

A person is **Insolvent** if:

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

- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

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

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

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

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

**Management Agreement** means the investment management agreement between Ozgrowth and the Manager dated 31 October 2007.

**Manager** means Westoz Funds Management Pty Ltd (ACN 106 677 721).

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

- (a) at the election of WAM Capital, the value of the NTA of Ozgrowth being reduced by at least 10% at the Calculation Date compared to the NTA of Ozgrowth most recently calculated and announced to the ASX prior to the date of this agreement; or
- (b) at the election of WAM Capital, the WAM Capital Share price premium to NTA falling below 12.5% at the Calculation Date, calculated with reference to the WAM Capital VWAP and the NTA of WAM Capital on the Calculation Date calculated under clause 5.3(f); or
- (c) at the election of Ozgrowth, the WAM Capital Share price premium to NTA increasing above 25% at the Calculation Date, calculated with reference to the WAM Capital VWAP and the NTA of WAM Capital on the Calculation Date calculated under clause 5.3(f),

but does not include:

- (d) any matter Disclosed;
- (e) any matter, event or circumstance arising from changes in general economic or political conditions, the securities market in general or law;
- (f) any change in taxation, interest rates or general economic conditions which impact on Ozgrowth and WAM Capital in a similar manner;

- (g) any change in generally accepted accounting principles or the interpretation of them;
- (h) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Scheme or the transactions contemplated by them; or
- (i) any change regarding Ozgrowth, occurring with the written consent of WAM Capital.

**Material Contract** means any contract or commitment by Ozgrowth involving an amount of not less than \$50,000 or which is for a period of more than 60 days.

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

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

- (a) not include any deferred tax balances and will reflect the pro-forma impact of any:
  - (i) Ozgrowth Permitted Dividend (in respect of Ozgrowth);
  - (ii) WAM Capital Permitted Dividend (in respect of WAM Capital); or
  - (iii) distribution payable in accordance with this Agreement,
 with a record date scheduled to fall between the Calculation Date and the Record Date;
- (b) be calculated on the basis of the last sale price of the relevant party's underlying portfolio positions on the Calculation Date; and
- (c) be after any costs of selling (such as brokerage costs) that would be incurred if the portfolio positions were disposed on the Calculation Date.

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

**Ozgrowth Auditor** means the auditor for Ozgrowth being, as at the date of this agreement, Ernst & Young.

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

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

**Ozgrowth Data** has the meaning given in clause 5.2(u).

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

**Ozgrowth Directors** means the directors of Ozgrowth.

**Ozgrowth Disclosure Material** means the written information disclosed by or on behalf of Ozgrowth to WAM Capital or any of its Representatives in the Ozgrowth Data Room as at 5.00pm on the day that is 2 Business Days before the date of this agreement, the index of which has been initialled by the parties (or their respective lawyers) for the purpose of identification before execution of this agreement.



**Ozgrowth Indemnified Parties** means:

- (a) Ozgrowth and its Representatives; and
- (b) the Manager and its Representatives.

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

**Ozgrowth NTA** means the NTA of Ozgrowth on the Calculation Date, as determined in accordance with clauses 5.2(u) and 5.3(h) and Confirmed by WAM Capital.

**Ozgrowth Permitted Dividend** has the meaning given in clause 4.6(b).

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

- (a) **(conversion)** Ozgrowth converting Ozgrowth Shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Ozgrowth resolving to reduce its capital in any way or resolving to reclassify, combine, split or redeem or repurchase directly or indirectly any of its securities;
- (c) **(buy-back)** Ozgrowth:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Ozgrowth, directly or indirectly, making or declaring, or announcing an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) other than the Ozgrowth Permitted Dividend;
- (e) **(issuing or granting shares or options)** Ozgrowth:
  - (i) issuing shares;
  - (ii) granting an option over its shares; or
  - (iii) agreeing to make such an issue or grant such an option;
- (f) **(securities or other instruments)** Ozgrowth issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) **(constitution)** Ozgrowth adopting a new constitution or modifying or repealing its constitution or a provision of it;
- (h) **(disposals)** Ozgrowth disposing, or agreeing to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** Ozgrowth:
  - (i) acquiring or disposing of;
  - (ii) agreeing to acquire or dispose of; or
  - (iii) offering, proposing, announcing a bid or tenders for, any business, assets, entity or undertaking the value of which exceeds \$50,000;



- (j) **(Encumbrances)** Ozgrowth creating, or agreeing to create, any Encumbrance over or declaring itself the trustee of the whole or a substantial part of its business or property;
- (k) **(director arrangements)** Ozgrowth:
- (i) increasing the remuneration of, or otherwise varying the arrangements with, any of its directors;
  - (ii) accelerating the rights of any of its directors to compensation or benefits of any kind (including under any Ozgrowth executive or employee share plans); or
  - (iii) paying any of its directors a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement);
- (l) **(commitments and settlements)** Ozgrowth:
- (i) entering into any contract or commitment involving revenue or expenditure of more than \$50,000 over the term of the contract or commitment;
  - (ii) (without limiting the above) entering into any contract or commitment relating to the same matter or project involving revenue or expenditure which exceeds \$50,000 in aggregate over the term of the contracts or commitments;
  - (iii) terminating or amending in a material manner any contract material to the conduct of Ozgrowth's business or which involves revenue or expenditure of more than \$50,000 over the term of the contract;
  - (iv) waiving any material third party default; or
  - (v) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$50,000) less than the full compensation due to Ozgrowth or a Subsidiary of Ozgrowth;
- (m) **(Insolvency)** Ozgrowth or any of its Related Bodies Corporate becomes Insolvent; or
- (n) **(authorise)** Ozgrowth authorises or agrees to do, or makes any representation or warranty regarding doing, authorising or agreeing to do, any of the matters in items (a) to (m),

provided that an Ozgrowth Prescribed Occurrence listed in items (a) to (n) will not occur where:

- (o) the event was Disclosed; or
- (p) Ozgrowth has first consulted with WAM Capital in relation to the event and WAM Capital has approved the proposed event in writing.

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

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

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

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

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

**Registry** means Computershare Investor Services Pty Limited (ACN 078 279 277) or such other person that provides share registry services to Ozgrowth from time to time.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval under section 411(2) of the Corporations Act.

**Regulatory Authority** includes:

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

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

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

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

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

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

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

**Scheme Consideration** means the number of WAM Capital Shares to be issued per Ozgrowth Share held by a Scheme Participant, having reference to the WAM Capital VWAP and the Ozgrowth NTA, plus a premium of 7.5% to the Ozgrowth NTA, being the consideration payable by WAM Capital for the transfer of Ozgrowth Shares held by a Scheme Participant to WAM Capital.

The number of WAM Capital Shares to be issued per Ozgrowth Share held by a Scheme Participant is calculated using the formula below:

*Number of WAM Capital Shares = (Ozgrowth NTA x 1.075) / WAM Capital VWAP*

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

**Scheme Participant** means each person who is a Ozgrowth Shareholder at the Record Date other than WAM Capital.

**Second Court Date** means the first day on which the Court hears an application for an order to be made pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

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

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

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

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

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

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

**Superior Proposal** means a bona fide Competing Transaction which the Ozgrowth Directors, acting in good faith, and after taking written advice from their legal and financial advisers, determine is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction, including any timing considerations, any conditions or other matters affecting the probability of the Competing Transaction being completed, and the identity of the person making the Competing Transaction; and
- (b) of a higher financial value and is more favourable to Ozgrowth Shareholders as a whole than the terms of the Transaction, taking into account all aspects of the Competing Transaction, including the identity, reputation and financial condition of the person making the proposal, legal, regulatory and financial matters.

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

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

**Third Party** means a person other than WAM Capital and its Representatives.

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

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

**Transaction Costs** means, unless otherwise agreed in this agreement, including in clause 16, all of Ozgrowth's costs associated with implementing the Transaction (including fees for Ozgrowth's financial, taxation, legal and other professional advisers, counsel fees, fees of the Independent Expert, all fees payable to the Manager (including any accrued fees, termination payments and costs and expenses under the Management Agreement), all fees payable to Euroz and/or Euroz Securities (including any termination payments and costs and expenses under any agreement with those entities), all claims arising in relation to or under the Management Agreement, costs associated with the D&O Run-Off Insurance, and including GST paid on such costs to the extent not reduced by an input tax credit, referable in any way to the Transaction or the period up to the Calculation Date that remain unpaid as at the Calculation Date.

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

**WAM Capital Data** has the meaning given in clause 5.3(g).

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

**WAM Capital Disclosure Material** means the written information disclosed by or on behalf of WAM Capital to Ozgrowth or any of its Representatives in the WAM Capital Data Room as at 5.00pm on the day that is 2 Business Days before the date of this agreement, the index of which has been initialled by the parties (or their respective lawyers) for the purpose of identification before execution of this agreement.

**WAM Capital Group** means WAM Capital and its Related Bodies Corporate.

**WAM Capital Indemnified Parties** means:

- (a) WAM Capital and its Representatives; and
- (b) the manager of WAM Capital, Wilson Asset Management (International) Pty Limited (ACN 081 047 118), and its Representatives.

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

**WAM Capital Permitted Dividend** has the meaning given in clause 4.5(a).

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

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

**WAM Capital VWAP** means the one day volume weighted average price of WAM Capital Shares on the Calculation Date.

## **1.2 General interpretation**

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

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

## 2 Agreement to propose and implement Scheme

### 2.1 Ozgrowth to propose Scheme

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

### 2.2 Agreement to implement Scheme

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

## 3 Conditions Precedent

### 3.1 Conditions Precedent to the Scheme

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

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



Conditions Precedent		Party entitled to benefit	Party responsible
(e)	<b>(No Ozgrowth Prescribed Occurrence)</b> no Ozgrowth Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date.	WAM Capital	Ozgrowth
(f)	<b>(Management Agreement terminated)</b> on or before the Calculation Date, Ozgrowth and the Manager enter into a binding deed to terminate the Management Agreement, with that termination effective no later than the Implementation Date (but with all outstanding fees payable agreed by the Calculation Date, based on applicable figures as at the Calculation Date).	WAM Capital	Ozgrowth
(g)	<b>(No Material Adverse Effect)</b> no Material Adverse Effect occurs between the date of this agreement and 8.00am on the Second Court Date.	WAM Capital (as to paragraphs (a) and (b) in the definition in clause 1.1)  Ozgrowth (as to paragraph (c) in the definition in clause 1.1)	Ozgrowth (as to paragraphs (a) and (b) in the definition in clause 1.1)  WAM Capital (as to paragraph (c) in the definition in clause 1.1)
(h)	<b>(No breach of Ozgrowth Representations and Warranties)</b> each of the Ozgrowth Representations and Warranties is true and correct in all material respects as at the time it is given under clause 10.1.	WAM Capital	Ozgrowth
(i)	<b>(No breach of WAM Capital Representations and Warranties)</b> each of the WAM Capital Representations and Warranties is true and correct in all material respects as at the time it is given under clause 10.5.	Ozgrowth	WAM Capital
(j)	<b>(Independent Expert)</b> the Independent Expert issues the Independent Expert's Report which concludes that the Scheme is in the best interest of Ozgrowth Shareholders before the date	Ozgrowth	Ozgrowth



Conditions Precedent		Party entitled to benefit	Party responsible
	on which the Scheme Booklet is lodged with ASIC and the Independent Expert does not change its opinion or otherwise withdraw the report before 8:00am on the Second Court Date.		

### 3.2 Reasonable endeavours

Each of Ozgrowth and WAM Capital agree to use reasonable endeavours to procure that:

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

### 3.3 Regulatory matters

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

- (a) **(applying for ASIC and ASX consents and approvals)** must promptly apply for all relevant ASIC and ASX consents and approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) **(ASIC and ASX consents and approvals process)** must take all steps it is responsible for as part of the ASIC and ASX consents and approvals process, including responding to requests for information at the earliest practicable time;
- (c) **(representation)** has the right to be represented and make submissions at any meeting with ASIC and ASX consents and approvals; and
- (d) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any ASIC and ASX consents and approvals and:
  - (i) provide the other party with drafts of any material written communications to be sent to ASIC and ASX (as applicable) and make any amendments as the other party reasonably requires; and
  - (ii) provide copies of any material written communications sent to or received from ASIC or ASX (as applicable) to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the application for an ASIC or ASX consent or approval (as applicable) to the other party and the party applying for an ASIC or ASX consent or approval (as applicable) may withhold or redact information or documents from the other

party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant.

### 3.4 Waiver of Conditions Precedent

- (a) A Condition Precedent:
  - (i) may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1;
  - (ii) may only be waived in writing by both parties together where that Condition Precedent is expressed to apply for the benefit of both parties;
  - (iii) will be effective only to the extent specifically set out in that waiver; and
  - (iv) may only be waived before 8.00am on the date of the Second Court Date.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.4 may do so in its absolute discretion.
- (c) If either Ozgrowth or WAM Capital waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.4, then:
  - (i) subject to clause 3.4(c)(ii), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
  - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
    - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.4(c)(i); or
    - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.5 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and

- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.5(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

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

- (a) If a Condition Precedent (other than the Condition Precedent in clause 3.1(c)) is not satisfied by the time and date specified for that Condition Precedent (and has not been waived in accordance with this agreement), then unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, Ozgrowth must make an application to defer the Second Court Date until such time (being no later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.
- (b) If the Condition Precedent in clause 3.1(b) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within three Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.

### **3.7 Consultation on failure of Condition Precedent**

If:

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

the parties must consult in good faith with a view to determine whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### **3.8 Failure to agree**

If the parties are unable to reach agreement under clause 3.7 within five Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.8(b), either party may terminate this agreement (and that termination will be in accordance with clause 11.1(f)(i)); or
- (b) if the relevant Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and that termination will be in accordance with clause 11.1(f)(ii)),

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

- (c) A party will not be entitled to terminate this agreement under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this agreement by that party or a deliberate act or omission of that party.

## **4 Outline of Scheme**

### **4.1 Scheme**

Ozgrowth must propose a scheme of arrangement under which:

- (a) all of the Ozgrowth Shares held by Scheme Participants at the Record Date will be transferred to WAM Capital; and
- (b) subject to and in accordance with this agreement and the Scheme, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each Ozgrowth Share held by that Scheme Participant.

### **4.2 Scheme Consideration**

- (a) WAM Capital, subject to clause 4.2(b) and the Scheme, covenants in favour of Ozgrowth (in its own right and on behalf of the Scheme Participants) that, in consideration of the transfer to WAM Capital of each Ozgrowth Share held by a Scheme Participant on the Implementation Date, WAM Capital will issue the Scheme Consideration to each Scheme Participant. Any fractional entitlement of a Scheme Participant to a part of a New WAM Capital Share will be rounded up or down (as applicable) to the nearest whole number of New WAM Capital Shares and for the avoidance of doubt, fractional entitlements of 0.5 of a New WAM Capital Share will be rounded up.
- (b) WAM Capital will, unless satisfied that the laws of an Ineligible Overseas Shareholder's country of residence (as shown in the Register) permit the issue of New WAM Capital Shares under the Scheme to the Ineligible Overseas Shareholder (either unconditionally or after compliance with conditions which WAM Capital and Ozgrowth reasonably regard as acceptable and not unduly onerous and not unduly impracticable), issue New WAM Capital Shares to which an Ineligible Overseas Shareholder would otherwise become entitled to a nominee appointed by WAM Capital who will sell those New WAM Capital Shares and pay to that Ineligible Overseas Shareholder the proceeds received, after deducting any applicable brokerage, taxes and charges.

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

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

- (a) the New WAM Capital Shares will rank equally in all respects with all existing WAM Capital Shares from their date of issue;
- (b) it will do everything reasonably necessary to ensure that trading in the New WAM Capital Shares commences by the first Business Day after the Implementation Date; and
- (c) on issue, each New WAM Capital Share will be fully paid and free from any Encumbrance.

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

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

#### 4.5 WAM Capital Permitted Dividend

- (a) Subject to the requirements of this clause 4.5, WAM Capital may (in its absolute discretion) determine to pay or declare and pay to its shareholders a dividend in the ordinary course in respect of the financial period ending 31 December 2021 (**WAM Capital Permitted Dividend**), provided that:
  - (i) the payment of the WAM Capital Permitted Dividend must comply with the Corporations Act; and
  - (ii) if Scheme Participants are:
    - (A) eligible for the WAM Capital Permitted Dividend, the record date for the WAM Capital Permitted Dividend must be after the Record Date; or
    - (B) ineligible for the WAM Capital Permitted Dividend, the record date for the WAM Capital Permitted Dividend must be before the Record Date.
- (b) If WAM Capital announces, determine to pay or declares and pays the WAM Capital Permitted Dividend in accordance with clause 4.5(a), the WAM Capital Permitted Dividend:
  - (i) may be franked to the maximum extent possible; and
  - (ii) is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of WAM Capital existing immediately prior to the declaration of that dividend.

The provisions of this clause 4.5 do not prevent the determination to pay or declaration or payment of a dividend by WAM Capital if this agreement is terminated.

#### 4.6 Ozgrowth dividend prohibited other than in certain circumstances

- (a) The parties acknowledge their intention for the Scheme Participants to be eligible for the WAM Capital Permitted Dividend.
- (b) In the event that the Scheme Participants are ineligible for any reason to receive the WAM Capital Permitted Dividend, then subject to the requirements of this clause 4.6, Ozgrowth may determine to pay or declare and pay a dividend to its shareholders, equivalent to the number of WAM Capital Shares offered as Scheme Consideration *multiplied by* the WAM Capital Permitted Dividend per WAM Capital Share (**Ozgrowth Permitted Dividend**), provided that:
  - (i) the payment of the Ozgrowth Permitted Dividend must comply with the Corporations Act; and
  - (ii) the record date and payment date for the Ozgrowth Permitted Dividend must be before the Record Date.
- (c) If Ozgrowth announces, determines to pay or declares and pays the Ozgrowth Permitted Dividend in accordance with clause 4.6(b), the Ozgrowth Permitted Dividend:

- (i) may be franked to the maximum extent possible; and
- (ii) is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of Ozgrowth existing immediately prior to the declaration of that dividend.
- (d) For the avoidance of doubt, Ozgrowth is liable for any franking deficit or any liability associated with an incorrect capital gain attribution for the Ozgrowth Permitted Dividend.
- (e) For the avoidance of doubt, Ozgrowth must not determine to pay or declare and pay to its shareholders a dividend, other than pursuant to this clause 4.6.
- (f) This clause 4.6 does not prevent the determination to pay or declaration or payment of a dividend by Ozgrowth if this agreement is terminated.

## 5 Implementation

### 5.1 General obligations

Ozgrowth and WAM Capital must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

### 5.2 Ozgrowth's obligations

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

- (a) **(announce directors' recommendation)** following execution of this agreement, announce, in the form contained in Annexure A (on the basis of statements made to Ozgrowth by the Ozgrowth Directors) that each Ozgrowth Director:
  - (i) intends to recommend that the Scheme is in the best interests of Ozgrowth Shareholders and that Ozgrowth Shareholders vote in favour of the Scheme; and
  - (ii) intends to vote, or cause to be voted, all Ozgrowth Shares in which he has a Relevant Interest (if any) in favour of the Scheme,
 subject to:
  - (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of the Ozgrowth Shareholders; and
  - (iv) there being no Superior Proposal;
 and for the avoidance of doubt, the Directors' recommendation must not prefer or recommend any element of the Scheme over another.
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to



- enable the Independent Expert to prepare the Independent Expert's Report for the Scheme Booklet as soon as practicable (and any update to any such report);
- (c) **(preparation of Scheme Booklet)** subject to clause 5.2(d), as soon as practicable after the date of this agreement, prepare the Scheme Booklet:
- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, ASIC Regulatory Guide 110 and the Listing Rules;
  - (ii) which includes a statement by the Ozgrowth Directors:
    - (A) unanimously recommending that Ozgrowth Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of the Ozgrowth Shareholders and there being no Superior Proposal; and
    - (B) that each Ozgrowth Director who holds Ozgrowth Shares intends to vote, or cause to be voted, all Ozgrowth Shares in which he has a Relevant Interest (if any) in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of the relevant Ozgrowth Shareholders and there being no Superior Proposal;
- (d) **(Scheme Booklet consultation with WAM Capital)** consult with WAM Capital as to the content and presentation of the Scheme Booklet, which includes:
- (i) allowing WAM Capital a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet, including advanced drafts and the final report received from the Independent Expert (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to WAM Capital);
  - (ii) obtaining any relevant factual inputs necessary for the Independent Expert to opine;
  - (iii) taking any reasonable comments made by WAM Capital into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iv) providing to WAM Capital a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval under section 411(2) of the Corporations Act is finalised; and
  - (v) obtaining WAM Capital's consent to the inclusion of the WAM Capital Information (including in respect of the form and context in which the WAM Capital Information appears in the Scheme Booklet);
- (e) **(lodgement of Regulator's Draft)**
- (i) no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to WAM Capital immediately following; and
  - (ii) keep WAM Capital reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so,



consult with WAM Capital in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to WAM Capital Information, Ozgrowth must not take any steps to address them without WAM Capital's prior written consent, not to be unreasonably withheld);

- (f) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (g) **(Court document consultation with WAM Capital)** consult with WAM Capital as to the content of documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from WAM Capital prior to filing those documents with the Court;
- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Ozgrowth to convene the Scheme Meeting;
- (i) **(register Scheme Booklet)** request ASIC register the Explanatory Statement forming part of the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (j) **(send Scheme Booklet)** send the Scheme Booklet to Ozgrowth Shareholders as soon as practicable after the Court orders Ozgrowth to convene the Scheme Meeting;
- (k) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Ozgrowth becomes aware:
  - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Ozgrowth Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with WAM Capital in good faith as to the need for, and the form of, any supplementary disclosure to Ozgrowth Shareholders, and make any disclosure that Ozgrowth considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 10.1(g) if it applied as at the date that information arose;
- (l) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court under section 411(1) of the Corporations Act;
- (m) **(no Ozgrowth Prescribed Occurrence)** take all reasonable steps to ensure that no Ozgrowth Prescribed Occurrence occurs during the period commencing of the date of this agreement and ending at 8:00am on the Second Court Date and, if a Ozgrowth Prescribed Occurrence occurs, immediately inform WAM Capital;
- (n) **(Directors' voting)** use its reasonable endeavours to procure that each Ozgrowth Director votes, or causes to be voted, all Ozgrowth Shares in which he has a Relevant Interest (if any) in favour of the Scheme, subject to the

- Independent Expert continuing to conclude that the Scheme is in the best interests of the Ozgrowth Shareholders and there being no Superior Proposal;
- (o) **(Share Register changes)** inform WAM Capital within two Business Days of any changes involving an Ozgrowth Shareholder increasing its holding of Ozgrowth Shares by 1% or more (calculated as a proportion of the total number of Ozgrowth Shares on issue);
  - (p) **(Registry details)** subject to the terms of the Scheme, provide:
    - (i) all necessary information about the Ozgrowth Shareholders which WAM Capital reasonably requires in order to solicit votes at the Scheme Meeting; and
    - (ii) all necessary directions to the Registry to promptly provide any information that WAM Capital requires in relation to the Share Register, including any sub-register, and where requested by WAM Capital, Ozgrowth must procure that information to be provided in the electronic form as reasonably requested by WAM Capital;
  - (q) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Ozgrowth Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by WAM Capital);
  - (r) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
  - (s) **(listing)** take all reasonable steps to maintain Ozgrowth's listing on ASX, notwithstanding any suspension of the quotation of Ozgrowth Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
  - (t) **(proxy solicitation)** if requested by WAM Capital and at WAM Capital's expense retain a proxy solicitation services firm to assist Ozgrowth with the solicitation of votes at the Scheme Meeting and provide WAM Capital with copies of or access to information regarding the Scheme Meeting generated by that firm, including promptly advising WAM Capital, at such times as WAM Capital may reasonably request and at least on a daily basis on each of the last five Business Days prior to the date of the Scheme Meeting, as to the aggregate tally of the votes received by Ozgrowth in respect of the Scheme;
  - (u) **(Calculation of Ozgrowth NTA for Scheme Consideration)** procure that the Ozgrowth NTA is calculated and delivered to WAM Capital within two Business Days of the Calculation Date with sufficient supporting information (**Ozgrowth Data**) to permit WAM Capital to review and Confirm the calculation. For the avoidance of doubt, the Ozgrowth NTA for Scheme Consideration must be calculated before all current and deferred tax balances and after Transaction Costs, which are treated as liabilities of Ozgrowth;
  - (v) **(Confirmation of WAM Capital VWAP)** Confirm the WAM Capital VWAP within two Business Days of receipt; and
  - (w) **(Court approval)** subject to all Conditions Precedent, other than paragraph (c) in clause 3.1, being satisfied or waived in accordance with this agreement, apply to

the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

- (x) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
  - (i) a certificate signed by one of its directors and made in accordance with a resolution of the Ozgrowth Board confirming (in respect of matters within Ozgrowth's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to WAM Capital by 5.00pm on the Business Day prior to the Second Court Date; and
  - (ii) any certificate provided to it by WAM Capital under clause 5.3(i);
- (y) **(Share Register)** close the Share Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (z) **(instruments of transfer)** subject to WAM Capital satisfying its obligations under clause 4.2, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Ozgrowth Shares to WAM Capital in accordance with the Scheme; and
  - (ii) register all transfers of Ozgrowth Shares held by Scheme Participants to WAM Capital; and
- (aa) **(Suspension of trading)** apply to ASX to suspend trading in Ozgrowth Shares with effect from the close of trading on the Effective Date;
- (bb) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Ozgrowth must undertake (if requested by the Court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme; and
- (cc) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

### 5.3 WAM Capital's obligations

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

- (a) **(WAM Capital Information)** prepare and promptly provide to Ozgrowth for inclusion in the Scheme Booklet the WAM Capital Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel policy and guidance notes and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
- (b) **(further WAM Capital Information)** promptly provide to Ozgrowth any further or new WAM Capital Information as may arise after the Scheme Booklet has been sent to Ozgrowth Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the WAM Capital Information contained in the

Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 10.5(g) if it applied as at the date on which such further or new WAM Capital Information arose;

- (c) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, WAM Capital must undertake (if requested by the Court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (e) **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll;
- (f) **(Calculation of NTA at Calculation Date)** procure that WAM Capital's NTA is calculated as at the Calculation Date and delivered to Ozgrowth within two Business Day of the Calculation Date, for the purposes of confirming no Material Adverse Effect has arisen under paragraph (b) of its definition;
- (g) **(Calculation of WAM Capital VWAP for Scheme Consideration)** procure that the WAM Capital VWAP is calculated and delivered to Ozgrowth within two Business Days of the Calculation Date with sufficient supporting information **(WAM Capital Data)** to permit Ozgrowth to review and Confirm the calculation;
- (h) **(Confirmation of Ozgrowth Data)** Confirm the Ozgrowth Data within two Business Days of receipt of Ozgrowth's calculation pursuant to clause 5.2(u);
- (i) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Ozgrowth for provision to the Court at the hearing on that date a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within WAM Capital's knowledge) whether or not the Conditions Precedent for which WAM Capital is responsible, as noted in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Ozgrowth by 5.00pm on the Business Day prior to the Second Court Date;
- (j) **(transfer)** if the Scheme becomes Effective, accept a transfer of the Ozgrowth Shares as contemplated by clause 4.2(a);
- (k) **(Listing)** procure that the New WAM Capital Shares to be issued as Scheme Consideration pursuant to the Scheme are approved for official quotation by ASX, subject to any conditions which ASX may reasonably require and which are acceptable to both WAM Capital and Ozgrowth, acting reasonably and promptly; and
- (l) **(Scheme Consideration)** if the Scheme becomes Effective, register or cause to be registered the Scheme Participants who are to receive the Scheme Consideration under the Scheme (or the nominee of Ineligible Overseas Shareholders appointed pursuant to clause 4.2(b)) as the holders of New WAM Capital Shares to which those Scheme Participants are entitled under the terms of the Scheme.

#### 5.4 Scheme Booklet responsibility statement

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

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

#### 5.5 Disagreement on content of Scheme Booklet

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

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

#### 5.6 Verification

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

#### 5.7 Conduct of Court proceeding

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

#### 5.8 Appeal process

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

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



in which case, either party may terminate this agreement in accordance with clause 11.1(f)(iii).

## 5.9 No partnership or joint venture

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

## 5.10 Ownership of Names

- (a) The parties agree that, as soon as practicable after the Implementation Date, WAM Capital will approve and cause the company name of Ozgrowth to be changed.
- (b) On and from the Implementation Date:
  - (i) WAM Capital must not, use (either on its own or in combination with other material) any trade mark, logo, get up or business, domain or company name containing:
    - (A) Ozgrowth;
    - (B) an Ozgrowth trade mark; or
    - (C) any word, expression, letter, name, logo or mark that is similar to or likely to be confused with Ozgrowth or an Ozgrowth trade mark,
 (together, **Ozgrowth Naming Rights**).
  - (ii) The Ozgrowth Naming Rights will be owned and retained by the Manager.
- (c) Ozgrowth will procure that, subject to clauses 5.10(d), the Manager agrees that it will not take any action against WAM Capital in respect of any breach of clause 5.10(b) in respect of the Ozgrowth Naming Rights during the period of 2 months after the Implementation Date, provided that WAM Capital has used all reasonable endeavours to avoid, or minimise the extent of, the breach and does not use the Ozgrowth Naming Rights in a manner that is inconsistent with its use before the Implementation Date.
- (d) WAM Capital must immediately discontinue any use referred to in clause 5.10(c) if such use would breach any law or if the breach gives rise to an offence under any law.

# 6 Ozgrowth Director recommendation

## 6.1 Best endeavours

Ozgrowth must use its best endeavours to procure that none of the Ozgrowth Directors withdraws or changes their recommendation in favour of the Scheme, unless:

- (a) there is a Superior Proposal and Ozgrowth has complied with its obligations under clause 9.8; or
- (b) the Independent Expert concludes that the Scheme is not in the best interests of the Ozgrowth Shareholders, or adversely changes its previously given opinion that the Scheme is in the best interests of the Ozgrowth Shareholders,

and the Ozgrowth Board determines in good faith and acting reasonably, having received advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature), that they must do so because of their fiduciary or statutory duties to Ozgrowth Shareholders.

## 6.2 Withdrawal or change of recommendation

Without limiting clause 9, if a Ozgrowth Director proposes to withdraw or change their recommendation in accordance with clause 6.1:

- (a) Ozgrowth must notify WAM Capital in writing immediately; and
- (b) the parties must consult in good faith for two Business Days after the date on which the notification in clause 6.2(a) is given to consider and determine whether the recommendation in place at the time can be maintained. That recommendation cannot be withdrawn or changed in accordance with clause 6.1 until the end of the consultation period.

## 7 Directors

### 7.1 Release of WAM Capital Indemnified Parties

- (a) Subject to the Corporations Act, Ozgrowth releases its rights, and agrees with WAM Capital that it will not make a claim, against any WAM Capital Indemnified Party (other than WAM Capital) as at the date of this agreement and from time to time in connection with:
  - (i) any breach of any representations and warranties of WAM Capital; or
  - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the WAM Capital Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits Ozgrowth's rights to terminate this agreement under clause 11.1.
- (b) WAM Capital receives and holds the benefit of this clause to the extent it relates to each WAM Capital Indemnified Party on behalf of each of them.

### 7.2 Release for Ozgrowth Indemnified Parties

- (a) Subject to the Corporations Act, WAM Capital releases its rights, and agrees with Ozgrowth that it will not make a claim, against any Ozgrowth Indemnified Party (other than Ozgrowth) as at the date of this agreement and from time to time in connection with:
  - (i) any breach of any representations and warranties of Ozgrowth in this agreement; or
  - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Ozgrowth Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.2 limits WAM Capital's rights to terminate this agreement under clause 11.1.



- (b) Ozgrowth receives and holds the benefit of this clause to the extent it relates to each Ozgrowth Indemnified Party on behalf of each of them.

### 7.3 Appointment/retirement of Ozgrowth directors

On the Implementation Date, but subject to:

- (a) the Scheme Consideration having been issued to the Scheme Participants (or the nominee of Ineligible Overseas Shareholders appointed under clause 4.2(b)); and

- (b) receipt by Ozgrowth of signed consents to act,

Ozgrowth must use its reasonable endeavours to:

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

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

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

- (a) Subject to the Scheme becoming Effective and subject to clause 7.5, WAM Capital undertakes in favour of Ozgrowth and each of its Directors or officers that it will:

- (i) for a period of seven years from the Implementation Date, ensure that the Ozgrowth Constitution continues to contain those rules as are contained in the Ozgrowth Constitution at the date of this agreement that permit Ozgrowth 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 Ozgrowth to any person; and  
(ii) ensure that there is no variation or termination of:  
(A) any terms of the Ozgrowth Constitution or any other organisational document containing an indemnity, right of advancement of expenses, right of insurance or right of access to documents in favour of any current or previous director or officer of Ozgrowth; or  
(B) the terms of any indemnities, rights of advancement of expenses, rights to insurance and/or rights of access to documents or information under any deeds of indemnity, access and insurance (or other agreements) entered into by Ozgrowth with or in favour of any current or previous directors or officers of Ozgrowth,

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

- (iii) procure that Ozgrowth complies with any deeds of indemnity, access and insurance made by them in favour of their current and previous directors and officers.
- (b) WAM Capital consents to Ozgrowth arranging and effecting or procuring the arrangement and effecting of, on or before the date upon which Ozgrowth ceases to be managed by the Manager (**Termination Date**), separate directors' and officers' liability run-off insurance to cover, effective from the Termination Date for the maximum period available up to seven years on and from the Termination Date, the directors, officers and other individuals who are insured under the current directors' and officers' liability insurance policy applicable to Ozgrowth as at the Termination Date on terms no less favourable than such current policy in force immediately before the Termination Date in respect of acts or omissions occurring in the period up to and including the Termination Date (**D&O Run-Off Insurance**).
- (c) Subject to the Scheme becoming Effective, from the Implementation Date, WAM Capital agrees to provide, and to procure that Ozgrowth provides, all information required to give effect to the D&O Run-Off Insurance contemplated in clause 7.4(b), including the provision of reasonable assistance and information in order to make a claim under the D&O Run-Off Insurance.
- (d) WAM Capital must not, and from the Implementation Date must procure that Ozgrowth does not, amend or cancel the D&O Run-Off Insurance at any time after the Termination Date, or do anything or fail to do anything which would prejudice or adversely affect the D&O Run-Off Insurance (or the cover under such) at any time after the Termination Date.

## 7.5 Period of undertaking

The undertakings contained in clause 7.4 are given:

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

## 7.6 Benefit of undertaking for Ozgrowth

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

# 8 Conduct of business

## 8.1 Overview

From the date of this agreement up to and including the Implementation Date, Ozgrowth must conduct its business:

- (a) in the usual and ordinary course;
- (b) in substantially the same manner as previously conducted in the 12 months prior to the date of this agreement;
- (c) in accordance with, and use reasonable endeavours to procure the Manager's compliance with, the Management Agreement; and
- (d) in accordance with all applicable laws in all material respects, and must regularly consult with WAM Capital on the manner of conduct of the business.

## 8.2 Ozgrowth specific obligations

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

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

## 8.3 Ozgrowth prohibited actions

Other than with the prior approval of WAM Capital or as required by this agreement Ozgrowth must not, during the period referred to in clause 8.1:

- (a) **(Material Contracts)** subject to clause 8.4(b), enter into or terminate a Material Contract;
- (b) **(competition)** enter into any contract or commitment restraining Ozgrowth from competing with any person or conducting activities in any market;
- (c) **(related party transactions)** enter into any transaction with any related party of Ozgrowth as defined in section 228 of the Corporations Act;
- (d) **(accounting policies)** change any accounting policy applied by Ozgrowth to report its financial position other than any change required by a change in accounting standards;

- (e) **(tax)** settle or compromise or make any concessions in relation to any Tax claims, liabilities or disputes or make any election in relation to Tax, or otherwise engage in any transaction, act or event which gives rise to any Tax liability which is outside the ordinary course of business as it was conducted prior to the date of this agreement;
- (f) **(legal proceedings)** settle any legal proceedings, claim, investigation, arbitration or other like proceedings where the amount claimed exceeds \$50,000, either individually or in aggregate;
- (g) **(director agreements)** increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to, or otherwise vary the agreements with, any of its directors;
- (h) **(accelerate rights)** accelerate the rights of any of its directors to benefits of any kind;
- (i) **(termination payments)** pay a director, or executive a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement and a copy of which has previously been provided to WAM Capital;
- (j) **(adviser arrangements)** amend in any material respect any arrangement with its advisers in respect of the transactions contemplated by this agreement;
- (k) **(dividends)** announce, declare or pay any dividends other than the Ozgrowth Permitted Dividend; or
- (l) **(agree)** agree or resolve to do any of the matters set out above.

#### 8.4 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts:

- (a) the ability of Ozgrowth to take any action which:
  - (i) is expressly required or permitted by this agreement, the Scheme, or otherwise required by law;
  - (ii) has been Disclosed to WAM Capital; or
  - (iii) has been agreed to in writing by WAM Capital; or
- (b) the ability of the Manager to take any action in relation to the portfolio of investments of Ozgrowth which it considers is reasonably necessary in order to properly manage the portfolio in the ordinary course of business and in accordance with its obligations under the Management Agreement, which expressly includes the buying and selling of securities as determined by the Manager.

#### 8.5 Consultation with WAM Capital

Ozgrowth must consult with WAM Capital in good faith immediately after execution of this agreement and for the period up to the Implementation Date, to discuss and assist in preparing a transition plan.

#### 8.6 Access to people and Ozgrowth Information

Between the date of this agreement and the Implementation Date, Ozgrowth must:

- (a) as soon as reasonably practicable provide WAM Capital and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide WAM Capital and its officers and advisers with reasonable access to Ozgrowth's officers and advisers which WAM Capital reasonably requires for the purposes of:
  - (i) understanding Ozgrowth's financial position (including its cash flow and working capital position), trading performance and management control systems;
  - (ii) implementing the Scheme;
  - (iii) preparing for carrying on the business of Ozgrowth following implementation of the Scheme; and
  - (iv) any other purpose which is agreed in writing between the parties, provided in every case that the access is reasonably necessary to WAM Capital and does not place an unreasonable burden on the ability of Ozgrowth to run its business.

## 8.7 Facilitation

Where in this clause 8 an obligation is imposed on Ozgrowth to undertake any act or to ensure that an act does not occur, Ozgrowth must, in addition to doing so itself, procure that the Manager undertakes that act or refrains from undertaking that act (as the case requires) where the terms of the Management Agreement or any other agreement, arrangement or understanding or course of conduct between the Manager and Ozgrowth imposes responsibility for that matter on the Manager.

## 9 Exclusivity

### 9.1 No existing discussions

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

### 9.2 No-shop

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

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

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

### 9.3 No-talk

Subject to clause 9.5, during the Exclusivity Period, Ozgrowth must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Ozgrowth or any of its Representatives or the person has publicly announced the Competing Transaction.

#### 9.4 Due diligence information

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

- (a) enables any other person other than WAM Capital and its Representatives to undertake due diligence investigations on Ozgrowth or its business or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than WAM Capital and its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to Ozgrowth or its business or operations.

#### 9.5 Exceptions

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

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

#### 9.6 Further exceptions

Nothing in this agreement prevents Ozgrowth from:

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

#### 9.7 Notice of unsolicited approach

During the Exclusivity Period, Ozgrowth must promptly inform WAM Capital if it or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to WAM Capital:
  - (i) material details of the Competing Transaction; and
  - (ii) details of the proposed bidder or acquirer;
- (b) receives any request for information relating to Ozgrowth or any of its Related Bodies Corporate or any of their businesses or operations or any request for



access to the books or records of Ozgrowth or any of its Related Bodies Corporate, which Ozgrowth has reasonable grounds to suspect may relate to a current or future Competing Transaction; and

- (c) provides any information relating to Ozgrowth or any of its Related Bodies Corporate or any of its business or operations to any person in connection with or for the purposes of a current or future Competing Transaction.

## **9.8 Matching right**

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Ozgrowth:

- (a) must not, and must procure that each of its Related Bodies Corporate and Representatives do not, enter into, or agree to enter into, any legally binding agreement, arrangement or understanding (whether or not in writing) under which a Third Party, Ozgrowth (or any of its Related Bodies Corporate) or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its best endeavours to procure that none of the Ozgrowth Directors change their recommendation in favour of the Scheme, or publicly recommends, or otherwise endorses an actual, proposed or potential Competing Transaction (or recommends against the Scheme),

unless:

- (c) the Ozgrowth Board, acting in good faith and after consultation with its financial advisers and external legal advisors, determines that:
  - (i) failure to take that action would be inconsistent with its fiduciary or statutory duties; and
  - (ii) the proposed Competing Transaction would constitute an actual, proposed or potential Superior Proposal;
- (d) Ozgrowth has provided WAM Capital the information contemplated by clause 9.7;
- (e) Ozgrowth has given WAM Capital at least five Business Days after the later of:
  - (i) the date that Ozgrowth notifies WAM Capital that the Ozgrowth Directors have determined that the Competing Transaction would be or would be reasonably likely to be an actual, proposed or potential Superior Proposal under clause 9.8(c); and
  - (ii) the date of the provision of the information referred to in clause 9.8(d), to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (f) WAM Capital has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the five Business Day period referred to in clause 9.8(e).

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

## 9.9 WAM Capital counterproposal

If by the expiry of the five Business Day period referred to in clause 9.8(e) WAM Capital proposes to Ozgrowth, or announces amendments to the Scheme or a new proposal that may reasonably constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (**WAM Capital Counterproposal**), Ozgrowth must procure that the Ozgrowth Board considers the WAM Capital Counterproposal and if the Ozgrowth Board, acting reasonably and in good faith, determines that the WAM Capital Counterproposal would provide an equivalent or superior outcome for Ozgrowth Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the WAM Capital Counterproposal, then:

- (a) Ozgrowth and WAM Capital must use their best endeavours to agree the amendments to this agreement and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the WAM Capital Counterproposal and to implement the WAM Capital Counterproposal, in each case as soon as reasonably practicable; and
- (b) Ozgrowth must use its best endeavours to procure that each of the Ozgrowth Directors continues to recommend the Scheme (as modified by the WAM Capital Counterproposal) to Ozgrowth Shareholders.

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

## 9.10 Legal advice

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

# 10 Representations and warranties

## 10.1 Ozgrowth's representations and warranties

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

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this agreement, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this agreement do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any material document or agreement that is binding on it or its Subsidiaries.

- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this agreement, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Ozgrowth Information contained in the Scheme Booklet will be included in good faith and on the understanding that WAM Capital and its directors will rely on that information for the purposes of considering and approving the WAM Capital Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(Ozgrowth Information)** the Ozgrowth Information provided in accordance with this agreement and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(disclosure)** the Ozgrowth Disclosure Material contains all information actually known to Ozgrowth (having made reasonable enquiries) as at the date of this agreement regarding matters affecting or relating to it:
- (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in WAM Capital not entering into this agreement at all or only entering into this agreement on materially different terms;
- (i) **(continuous disclosure)** Ozgrowth is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this agreement);
- (j) **(complete and accurate)** all the information provided to WAM Capital by Ozgrowth in connection with this agreement, whether under due diligence or not, is complete and accurate and is not misleading, whether by way of omission or otherwise;
- (k) **(reasonable assumptions)** to the extent information provided to WAM Capital, whether under due diligence or not, in connection with this agreement, includes forward looking statements, those forward looking statements are based on assumptions which Ozgrowth believes, as at the date the information was provided and continues to believe, to be reasonable;
- (l) **(compliance)** Ozgrowth has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses and permits necessary for it to conduct its business as presently being conducted;
- (m) **(opinions)** any statement of opinion or belief contained in the Ozgrowth Information is honestly held and there are reasonable grounds for holding the opinion or belief;

- (n) **(provision of information to Independent Expert)** all information provided by or on behalf of Ozgrowth to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (o) **(no default)** Ozgrowth is not in material default under any document, agreement or instrument binding on it or its assets and which is material to Ozgrowth taken as a whole, nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with that effect;
- (p) **(securities)** Ozgrowth's issued securities as at the date of this agreement are 350,460,353 Ozgrowth Shares, and other than as Disclosed it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Ozgrowth Shares; and
- (q) **(no Encumbrances)** there are no material Encumbrances over all or any of its assets or revenues;
- (r) **(no Subsidiaries)** Ozgrowth has no Subsidiaries;
- (s) **(litigation or regulatory investigation)** there is no material litigation or regulatory investigation commenced or (so far as Ozgrowth is aware) threatened against Ozgrowth of any nature;
- (t) **(Insolvency event)** Ozgrowth is not Insolvent;
- (u) **(Ozgrowth Shares not indirect Australian real property interests)** the relevant Ozgrowth Shares held by each Scheme Participant are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Participant;
- (v) **(no compensation for termination)** implementation of the Transaction will not entitle the Manager to amend the terms of the Management Agreement, or require Ozgrowth to pay compensation to the Manager under the terms of the Management Agreement;
- (w) **(Management Agreement)** the Management Agreement:
- (i) does not provide for the payment of any fees or other sum to the Manager that has not been Disclosed other than performance fees;
  - (ii) provides for payment of management fees calculated by reference to a formula;
  - (iii) does not require Ozgrowth to consult with or obtain the consent of, the Manager to implement a capital return, share buyback or payment of a dividend (**Return**); and
  - (iv) requires the Manager to comply with any reasonable and lawful direction of the Ozgrowth Board;
- (x) **(change of control)** there is no agreement or other instrument to which Ozgrowth is a party, or (so far as Ozgrowth is aware) by or to which Ozgrowth or any of its assets are bound or subject, pursuant to which a person other than Ozgrowth has the right to take an action (as a result of the Scheme) which would

have the following consequence (to an extent which is material in the context of Ozgrowth taken as a whole) if exercised:

- (i) any monies borrowed by Ozgrowth being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in that agreement or other instrument;
- (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising under the agreement or instrument;
- (iii) the interest of Ozgrowth in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to that interest) being terminated or modified; or
- (iv) the business of Ozgrowth with any other person being adversely affected.

## 10.2 Ozgrowth's indemnity

Ozgrowth indemnifies the WAM Capital Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 10.1 not being true and correct.

## 10.3 Ozgrowth's knowledge or awareness

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

## 10.4 Qualifications on Ozgrowth's representations, warranties and indemnities

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

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

## 10.5 WAM Capital's representations and warranties

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

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this agreement, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this agreement do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or



- (iii) any material document or agreement that is binding on it;
- (d) (**authorisations**) it has in full force and effect each authorisation necessary for it to enter into this agreement, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) (**validity of obligations**) its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms;
- (f) (**reliance**) the WAM Capital Information provided to Ozgrowth for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Ozgrowth and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) (**WAM Capital Information**) the WAM Capital Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) (**reasonable assumptions**) to the extent information provided to Ozgrowth, whether under due diligence or not, in connection with this agreement, includes forward looking statements, those forward looking statements are based on assumptions which WAM Capital believes, as at the date the information was provided and continues to believe, to be reasonable;
- (i) (**disclosure**) the WAM Capital Disclosure Material has been collated and prepared in good faith, and WAM Capital is not aware of any information contained in the WAM Capital Disclosure Material that was false or misleading in any material respect (including by omission) as at the date of collation or preparation;
- (j) (**continuous disclosure**) WAM Capital is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the Transaction contemplated by this agreement);
- (k) (**compliance**) WAM Capital has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
- (l) (**opinions**) any statement of opinion or belief contained in the WAM Capital Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) (**no dealing with Ozgrowth Shareholders**), neither WAM Capital nor any of its Associates has any agreement, arrangement or understanding with any Ozgrowth Shareholder under which that Ozgrowth Shareholder (or an Associate of that Ozgrowth Shareholder) would be entitled to receive consideration for their Ozgrowth Shares different from the Scheme Consideration or under which the Ozgrowth Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;



- (n) **(provision of information to Independent Expert)** all information provided by or on behalf of WAM Capital to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (o) **(no default)** WAM Capital is not in material default under any document, agreement or instrument binding on it or its assets and which is material to WAM Capital taken as a whole, nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with that effect;
- (p) **(securities)** WAM Capital's issued securities as at the date of this agreement are 904,113,461 WAM Capital Shares;
- (q) **(no Encumbrances)** there are no material Encumbrances over all or any of its assets or revenues;
- (r) **(no Subsidiaries)** WAM Capital has no Subsidiaries;
- (s) **(litigation or regulatory investigation)** there is no material litigation or regulatory investigation commenced or (so far as WAM Capital is aware) threatened against WAM Capital of any nature;
- (t) **(WAM Capital Shares not indirect Australian real property interests)** WAM Capital Shares are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the holders of WAM Capital Shares; and
- (u) **(Insolvency event)** WAM Capital is not Insolvent.

#### **10.6 WAM Capital's indemnity**

WAM Capital indemnifies the Ozgrowth Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 10.5 not being true and correct.

#### **10.7 WAM Capital's knowledge or awareness**

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

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

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

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

## 10.9 Limitations of liability

- (a) Notwithstanding any other provision of this agreement:
- (i) the maximum liability of Ozgrowth to WAM Capital under or in connection with this agreement including in respect of any breach of the agreement will be \$1,000,000; and
  - (ii) the maximum liability amount referred to in clause 10.9(a)(i) represents the maximum and absolute amount of the liability of Ozgrowth under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Ozgrowth in connection with this agreement.
- (b) Notwithstanding any other provision of this agreement:
- (i) the maximum liability of WAM Capital to Ozgrowth under or in connection with this agreement including in respect of any breach of the agreement will be \$1,000,000; and
  - (ii) the maximum liability amount referred to in clause 10.9(b)(i) represents the maximum and absolute amount of the liability of WAM Capital under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by WAM Capital in connection with this agreement,
- except that nothing in this clause 10.9 limits the liability of WAM Capital for any breach of clause 4.2(a), 4.2(b) or 4.3.
- (c) Nothing in this clause 10.9 limits the liability of any party for fraud.

## 11 Termination

### 11.1 Termination events

This agreement may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by WAM Capital at any time prior to 8.00am on the Second Court Date if any Ozgrowth Director changes their recommendation to the Ozgrowth Shareholders that they vote in favour of the resolutions to approve the Scheme, including any adverse modification to their recommendation, or otherwise makes a public statement indicating that they no longer support the Scheme;
- (c) **(material breach)** by either party at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this agreement (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that the non-defaulting party has, if practicable, given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist five Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time that notice is given;
- (d) **(competing interest)** by WAM Capital at any time prior to 8.00 am on the Second Court Date, if a person (other than WAM Capital or its Associates) acquires a Relevant Interest in more than 20% of Ozgrowth Shares;

- (e) **(Competing Transaction)** by Ozgrowth at any time prior to 8.00 am on the Second Court Date if the Ozgrowth Board determines that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of 9.2 is a Superior Proposal;
- (f) **(consultation or appeal failure)** in accordance with and under:
  - (i) clause 3.8(a);
  - (ii) clause 3.8(b); or
  - (iii) clause 5.8;
- (g) **(agreement)** if agreed to in writing by WAM Capital and Ozgrowth;
- (h) **(Independent Expert)** by Ozgrowth at any time if the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of Ozgrowth Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Transaction is in the best interests of Ozgrowth Shareholders: or
- (i) **(Insolvency)** by either party if the other party becomes Insolvent.

## **11.2 Termination**

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

## **11.3 Effect of Termination**

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

## **11.4 Damages**

In addition to the right of termination under clause 11.1 where there is no appropriate remedy for the breach in this agreement (other than termination), subject to clause 10.9, the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this agreement.

# **12 Public announcements**

## **12.1 Public announcement of Transaction**

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

## **12.2 Required disclosure**

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

### 12.3 Other announcements

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

## 13 Confidential Information

### 13.1 Confidentiality agreement

WAM Capital and Ozgrowth acknowledge and agree that the parties to the Confidentiality Agreement continue to be bound by the Confidentiality Agreement in respect of all information received by it from or on behalf of the other party on, before or after the date of this agreement.

### 13.2 Survival of obligations

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

## 14 Notices and other communications

### 14.1 Form

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

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

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

### 14.2 Delivery

Communications must be:

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

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

### 14.3 When effective

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

#### 14.4 When taken to be received

Communications are taken to be received:

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

#### 14.5 Receipt outside business hours

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

### 15 GST

#### 15.1 Definitions and interpretation

For the purposes of this clause:

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

#### 15.2 GST exclusive

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

#### 15.3 Payment of GST

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

#### 15.4 Adjustment events

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

#### 15.5 Reimbursements

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

### 16 Costs

#### 16.1 Costs

The parties agree to pay their own costs and expenses in connection with the preparation, negotiation, execution and performance of this agreement and the Transaction, except for amounts covered by clause 16.2.

#### 16.2 Stamp duty and registration fees

WAM Capital:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this agreement or any other transaction contemplated by this agreement (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Ozgrowth against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 16.2(a).

WAM Capital agrees to pay amounts due to Ozgrowth under this clause within 3 Business Days of demand from WAM Capital.

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

### 17 General

#### 17.1 Variation and waiver

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

#### 17.2 Consents, approvals or waivers

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

#### 17.3 Discretion in exercising rights

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



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

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

#### **17.5 Conflict of interest**

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

#### **17.6 Remedies cumulative**

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

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

Any indemnity, reimbursement or similar obligation in this agreement.

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

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

#### **17.8 Inconsistent law**

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

#### **17.9 Supervening law**

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

#### **17.10 Counterparts**

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

#### **17.11 Entire agreement**

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

#### **17.12 Further steps**

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

- (a) bind the party and any other person intended to be bound under this agreement; or

- (b) show whether the party is complying with this agreement.

#### **17.13 Cooperation**

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

#### **17.14 No liability for loss**

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

#### **17.15 Severability**

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

#### **17.16 Rules of construction**

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

#### **17.17 Assignment**

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

#### **17.18 Enforceability**

For the purpose of this agreement:

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

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

#### **17.19 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and

- (c) clauses 17.19(a) and 17.19(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

---

## **18 Governing law**

### **18.1 Governing law and jurisdiction**

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

### **18.2 Serving documents**

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

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

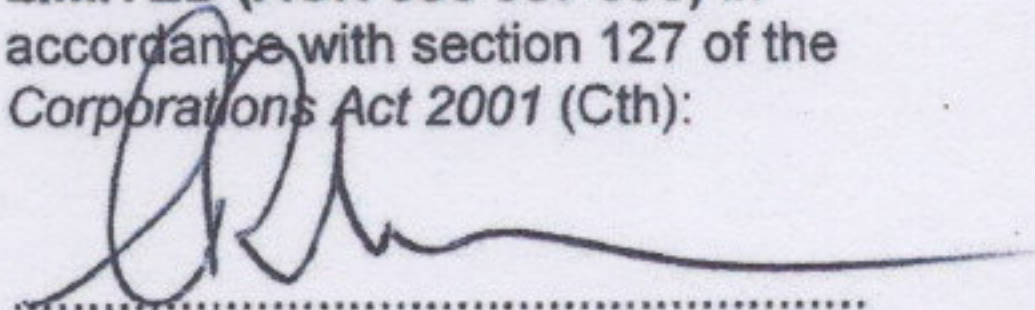
<b>Event</b>	<b>Date</b>
Sign Scheme Implementation Agreement and joint public announcement of the Transaction	22-23 December 2021
Lodge draft Scheme Booklet with ASIC	4 February 2022
First Court Date	28 February 2022
Printing and despatch of Scheme Booklet	1 March to 4 March 2022
Calculation Date	31 March 2022
Scheme Meeting	4 April 2022
Second Court Date	8 April 2022
Lodge Court order with ASIC (Effective Date)	11 April 2022
Record Date	13 April 2022
Implementation Date	21 April 2022



## Signing page

**EXECUTED** as an agreement

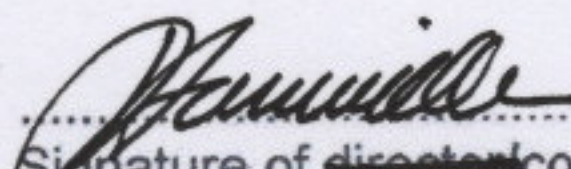
**EXECUTED** by **WAM CAPITAL LIMITED (ACN 086 587 395)** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:



Signature of director

LINDSAY ROBERT MANN

Name of director (block letters)



Signature of ~~director~~ company secretary\*

\*delete whichever is not applicable

Jesse Hamilton

Name of ~~director~~ company secretary\* (block letters)

\*delete whichever is not applicable

**EXECUTED** by **OZGROWTH LIMITED (ACN 126 450 271)** in accordance with section 127 of the *Corporations Act 2001 (Cth)* by authority of its directors:

Signature of director

Signature of director/company secretary\*

\*delete whichever is not applicable

Name of director (block letters)

Name of director/company secretary\* (block letters)

\*delete whichever is not applicable



## Signing page

**EXECUTED** as an agreement

**EXECUTED by WAM CAPITAL  
LIMITED (ACN 086 587 395)** in  
accordance with section 127 of the  
*Corporations Act 2001 (Cth)*:

.....  
Signature of director

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

**EXECUTED by OZGROWTH  
LIMITED (ACN 126 450 271)** in  
accordance with section 127 of the  
*Corporations Act 2001 (Cth)* by  
authority of its directors:

.....  
Signature of director

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

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

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

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

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



## **Annexure A    Public Announcement**

# WAM Capital and Ozgrowth set to merge

23 December 2021  
ASX announcement

WAM Capital Limited (WAM Capital) (ASX: WAM) and Ozgrowth Limited (Ozgrowth) (ASX: OZG) are pleased to announce that they have entered into a Scheme Implementation Agreement (annexed to this announcement) to merge the two entities (**Proposed Transaction**).

Under the Proposed Transaction, WAM Capital will acquire 100% of the shares in Ozgrowth that it does not currently own through a scheme of arrangement (**Scheme**). Under the Scheme, Ozgrowth shareholders will receive new WAM Capital shares as consideration for their Ozgrowth shares. The number of WAM Capital shares to be offered for each Ozgrowth share will be determined by a formula based on the ratio of the share price of WAM Capital to the net tangible assets (**NTA**) of Ozgrowth before tax (**pre-tax NTA**). Using the share price of WAM Capital and the pre-tax NTA of Ozgrowth at 30 November 2021 as an example<sup>1</sup>, Ozgrowth shareholders would receive 0.168 new WAM Capital shares for each Ozgrowth share they hold under the Proposed Transaction, with an indicative market value of \$0.372 per Ozgrowth share, representing a 32.8% uplift over the closing price of Ozgrowth on that day.

It is the intention of the WAM Capital Board of Directors to ensure that all Ozgrowth shareholders receiving WAM Capital shares issued under the Scheme will be eligible to receive the WAM Capital FY2022 fully franked interim dividend. A condition of the Proposed Transaction is that Ozgrowth will not pay an interim dividend and consequently the dividend target for Ozgrowth is withdrawn.

WAM Capital has today announced a similar transaction involving Westoz Investment Company Limited (ASX: WIC). The Proposed Transaction is independent of that transaction and the two transactions are not inter-conditional. The Proposed Transaction will proceed whether or not the transaction between WAM Capital and Westoz Investment Company Limited proceeds and vice versa.

WAM Capital Chairman Geoff Wilson AO said: "The WAM Capital Board of Directors believe the merged entity under the Scheme will provide both Ozgrowth and WAM Capital shareholders with appealing benefits. We look forward to welcoming Ozgrowth shareholders to the Wilson Asset Management family."

## Ozgrowth Board's Recommendation

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

Ozgrowth Chairman Jay Hughes said: "We believe the Proposed Transaction offers our investors the opportunity to better realise the underlying value in their holdings, with WAM Capital shares offering greater liquidity and closer alignment to the underlying asset value in a vehicle that has a similarly successful investment track record to Ozgrowth".

<sup>1</sup> Based on WAM Capital's closing share price of \$2.22 per share, Ozgrowth's pre-tax NTA of \$0.346 per share and Ozgrowth's closing share price of \$0.28 per share on 30 November 2021. The implied value of the Offer depends on the value of WAM Capital's share price and the Ozgrowth pre-tax NTA at the Calculation Date and the WAM Capital share price at the time the Scheme consideration is issued (on the Implementation Date), and could be higher or lower than the example used.

## Key benefits of the Proposed Transaction

The Proposed Transaction offers substantial benefits for Ozgrowth shareholders including:

- the ability to exit their investment in Ozgrowth at premium to the stated pre-tax NTA backing of the company and a premium to the share price of Ozgrowth;
- Wilson Asset Management's investment expertise and experience;
- Wilson Asset Management's commitment to shareholder engagement;
- WAM Capital's track record of investment portfolio performance; and
- WAM Capital's greater market capitalisation and on-market liquidity.

If the Proposed Transaction proceeds, it will create a single listed investment company with a larger capital and shareholder base. The merged entity will have:

- stable and clearly articulated investment strategy and a proven investment manager with a track record of providing investment portfolio performance for shareholders since inception in August 1999;
- the removal of duplication of expenses such as ASX listing fees, share registry fees, audit fees, compliance costs and other public listed company costs, as well as a larger pool of assets to spread the expenses across;
- a share price which has historically traded at a premium to the company's pre-tax NTA; and
- a pre-tax NTA of approximately \$1,801.6 million (based on the reported 30 November 2021 NTAs of WAM Capital and Ozgrowth) and approximately 44,000 shareholders.

## Scheme Consideration and Conditions Precedent

As consideration for their Ozgrowth shares under the Scheme, Ozgrowth shareholders will receive new WAM Capital shares as consideration for their Ozgrowth shares. The number of WAM Capital shares to be offered for each Ozgrowth share will be determined by a formula, based on the ratio of the volume weighted average share price of WAM Capital on the calculation date and a 7.5% premium to the pre-tax NTA of Ozgrowth. The indicative calculation date for this ratio is 31 March 2022, subject to any adjustments required by ASIC or ASX. It is a condition precedent that at the calculation date, the Ozgrowth pre-tax NTA has not fallen more than 10% compared to the Ozgrowth pre-tax NTA most recently announced on the ASX prior to the date of this announcement and the WAM Capital share price premium to NTA remaining between 12.5% and 25.0%.

## Scheme Implementation Agreement and indicative timeline

WAM Capital and Ozgrowth have entered into the attached Scheme Implementation Agreement, which contains the terms and conditions on which WAM Capital and Ozgrowth will implement the Proposed Transaction. The Scheme Implementation Agreement includes a number of customary clauses and is subject to conditions precedent including Ozgrowth shareholders approving the Scheme, the independent expert concluding that the Proposed Transaction is in the best interests of Ozgrowth shareholders and the Supreme Court of Western Australia approving the Scheme.

It is currently anticipated that Ozgrowth shareholders will be given the opportunity to vote on the Scheme at a meeting expected to be held on 4 April 2022. Detailed information relating to the Scheme will be set out in the Scheme Booklet, which is expected to be sent to Ozgrowth shareholders by the end of March 2022.

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

Event	Expected date
First Court date	28 February 2022
Scheme Booklet sent to Ozgrowth shareholders	By 4 March 2022
Calculation date for exchange ratio	31 March 2022
Scheme Meeting	4 April 2022
Second Court date	8 April 2022
Effective date	11 April 2022
Record date	13 April 2022
Implementation date	21 April 2022

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

### Contact details and advisors

Ozgrowth is being advised by Steinepreis Paganin as legal adviser. For further information, please contact [admin@westozfunds.com.au](mailto:admin@westozfunds.com.au).

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

#### Chief Financial Officer & Company Secretary

Jesse Hamilton  
T: +61 401 944 807  
E: [jesse@wilsonassetmanagement.com.au](mailto:jesse@wilsonassetmanagement.com.au)

#### Senior Corporate Affairs Advisor

Olivia Harris  
T: (02) 9247 6755  
E: [olivia@wilsonassetmanagement.com.au](mailto:olivia@wilsonassetmanagement.com.au)

This announcement has been authorised by the boards of WAM Capital Limited and Ozgrowth Limited.

### About Ozgrowth Limited

Ozgrowth Limited (ASX: OZG) is a listed investment company based in Perth. The Company's objective is to generate a positive return over the medium to long-term, regardless of the movements of the broader share market, from an actively managed portfolio of small cap ASX listed and unlisted investments, and provide shareholders with a consistent stream of dividends.

Since inception in 2008 when an initial \$80 million was raised, the portfolio has generated a return before fees and taxes of 12.2% per annum (6.7% per annum above the S&P/ASX All Ordinaries Accumulation Index) and paid \$44 million in fully franked dividends to shareholders. The Company's portfolio is managed by Westoz Funds Management Pty Ltd (AFSL 285607), a 100% owned subsidiary of Euroz Hartleys Group Limited.

## About WAM Capital

WAM Capital Limited (ASX: WAM) is a listed investment company (LIC) managed by Wilson Asset Management. Listed in August 1999, WAM Capital provides investors with exposure to an actively managed, diversified portfolio of undervalued growth companies listed on the ASX, with a focus on small-to-medium sized businesses. The Company's investment objectives are to deliver a stream of fully franked dividends, provide capital growth and preserve capital.

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



## About Wilson Asset Management

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

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



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

**Geoff Wilson AO**  
Chairman &  
Chief Investment Officer  
(02) 9247 6755

**Kate Thorley**  
Chief Executive Officer  
(02) 9247 6755  
0405 115 644

**Jesse Hamilton**  
Chief Financial Officer  
(02) 9247 6755  
0401 944 807

**Martyn McCathie**  
Head of Operations and Key  
Account Manager  
(02) 9247 6755  
0433 312 603

## **Annexure B     Scheme of Arrangement**



# **Scheme of Arrangement under Section 411 of the Corporations Act**

Ozgrowth Limited (ACN 126 450 271)  
(Ozgrowth)

Scheme Participants

**MILLS OAKLEY**  
Level 7, 151 Clarence Street  
SYDNEY NSW 2000  
Telephone: +61 2 8289 5800  
Facsimile: +61 2 9247 1315  
DX 13025, SYDNEY MARKET STREET  
[www.millsOakley.com.au](http://www.millsOakley.com.au)

## Contents

### Details 3

<b>1</b>	<b>Definitions and Interpretation.....</b>	<b>4</b>
1.1	Definitions.....	4
1.2	General interpretation .....	8
<b>2</b>	<b>Preliminary matters.....</b>	<b>9</b>
2.1	Ozgrowth .....	9
2.2	WAM Capital.....	9
2.3	Scheme summary.....	9
2.4	Implementation .....	9
<b>3</b>	<b>Conditions precedent and Effectiveness.....</b>	<b>10</b>
3.1	Conditions precedent to Scheme .....	10
3.2	Conditions precedent and operation of clauses 4 and 8.....	10
3.3	Certificate in relation to conditions precedent.....	10
3.4	Effective Date .....	10
3.5	End Date .....	10
<b>4</b>	<b>Implementation.....</b>	<b>11</b>
4.1	Lodgement of Court orders with ASIC.....	11
4.2	Transfer and registration of Scheme Shares.....	11
<b>5</b>	<b>Consideration .....</b>	<b>11</b>
5.1	Entitlement to consideration.....	11
5.2	Provision of Scheme Consideration .....	11
5.3	Joint holders .....	12
5.4	Fractional entitlements.....	12
5.5	Ineligible Overseas Shareholders .....	12
5.6	Unclaimed consideration.....	13
5.7	Orders of a court or Regulatory Authority.....	14
<b>6</b>	<b>Dealings in Ozgrowth Shares .....</b>	<b>14</b>
6.1	Determination of Scheme Participants .....	14
6.2	No issue .....	14
6.3	No registration of transfers.....	14
6.4	Statements of holding .....	15
6.5	Maintenance of Share Register.....	15
6.6	Details of Scheme Participants .....	15
<b>7</b>	<b>Quotation of Ozgrowth Shares .....</b>	<b>15</b>
7.1	Suspension of trading .....	15
7.2	Termination of quotation .....	15
<b>8</b>	<b>WAM Capital's obligations and ancillary matters .....</b>	<b>15</b>
8.1	Status of New WAM Capital Shares.....	15
8.2	Quotation of Scheme Consideration .....	16
8.3	Appointment of WAM Capital as attorney and agent.....	16
8.4	Scheme Participants bound .....	16
<b>9</b>	<b>General Scheme provisions .....</b>	<b>16</b>
9.1	Consent to Court amendments to this Scheme.....	16

	9.2	Further action by Ozgrowth.....	16
	9.3	Warranties by Scheme Participants .....	16
	9.4	Title to and rights in Scheme Shares .....	17
	9.5	Appointment of sole proxy .....	17
	9.6	Authority given to Ozgrowth .....	18
	9.7	Scheme binding .....	18
<b>10</b>		<b>General.....</b>	<b>18</b>
	10.1	Stamp duty .....	18
	10.2	Notices .....	19
	10.3	Governing law.....	19
	10.4	Serving documents .....	19
	10.5	Further action .....	19
	10.6	No liability when acting in good faith .....	19

## Details

Date	2021	
Parties	Ozgrowth and Scheme Participants	
Ozgrowth	Name	Ozgrowth Limited
	ACN	126 450 271
	Address	Level 18, Alluvion, 58 Mounts Bay Road, Perth WA 6000
	Email	prees@westozfunds.com.au
	Attention	Phil Rees
<b>Scheme Participants</b>	Each person who is a Ozgrowth Shareholder at the Record Date, other than WAM Capital.	
<b>Governing law</b>	Western Australia, Australia	

# 1 Definitions and Interpretation

## 1.1 Definitions

In this Scheme:

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

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

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

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

**Boardroom** means WAM Capital's share registry, Boardroom Pty Limited (ACN 003 209 836).

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

**Calculation Date** means:

- (a) 5:00pm (Sydney time) on 31 March 2022; or
- (b) or such other time and date as Ozgrowth and WAM Capital agree in writing.

**CHESS** means the Clearing House Electronic Sub-register System, for the electronic transfer of securities, operated by ASX Settlement.

**Computershare** means Ozgrowth's share registry, Computershare Investor Services Pty Limited (ABN 48 078 279 277).

**Conditions Precedent** means the conditions precedent in clause 3.1 of the Scheme Implementation Agreement.

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

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

**Court** means the Supreme Court of Western Australia, or any other court of competent jurisdiction under the Corporations Act agreed by Ozgrowth and WAM Capital in writing.

**Deed Poll** means the deed poll dated on or about the date of this document executed by WAM Capital, under which WAM Capital covenants in favour of the Scheme Participants to perform the actions attributed to it under this document.

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

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

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under sections 411(4)(b) and 411(6) in relation to the Scheme, but not before an office copy of the order of the Court is lodged with ASIC.

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

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

**End Date** means 31 May 2022 or such other date agreed by WAM Capital and Ozgrowth in writing.

**Euroz** means Euroz Hartleys Limited (ACN 104 195 057).

**Euroz Securities** means Euroz Hartleys Securities Limited (ACN 089 314 983).

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

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

**Implementation Date** means the 4<sup>th</sup> Business Day following the Record Date or such other date that Ozgrowth and WAM Capital agree in writing.

**Independent Expert** means BDO Corporate Finance (WA) Pty Ltd (ACN 124 031 045).

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

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

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

**Management Agreement** means the investment management agreement between Ozgrowth and the Manager dated 31 October 2007.

**Manager** means Westoz Funds Management Pty Ltd (ACN 106 677 721).

**New WAM Capital Shares** means the WAM Capital Shares to be issued to Scheme Participants as the Scheme Consideration, pursuant to the terms of this Scheme.

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

- (a) not include any deferred tax balances and will reflect the pro-forma impact of any:
  - (i) Ozgrowth Permitted Dividend (in respect of Ozgrowth);



- (ii) WAM Capital Permitted Dividend (in respect of WAM Capital); or
- (iii) distribution payable in accordance with this Agreement,  
with a record date scheduled to fall between the Calculation Date and the Record Date;
- (b) be calculated on the basis of the last sale price of the relevant party's underlying portfolio positions on the Calculation Date; and
- (c) be after any costs of selling (such as brokerage costs) that would be incurred if the portfolio positions were disposed on the Calculation Date.

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

**Ozgrowth Permitted Dividend** has the meaning given to it in clause 4.6(b) of the Scheme Implementation Agreement.

**Ozgrowth NTA** means the NTA of Ozgrowth on the Calculation Date, as determined in accordance with clauses 5.2(u) and 5.3(h) of the Scheme Implementation Agreement and Confirmed by WAM Capital.

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

**Ozgrowth Shareholder** means each person who is registered in the Share Register from time to time as the holder of a Ozgrowth Share.

**Record Date** means 5.00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other time and date as Ozgrowth and WAM Capital agree in writing.

**Registered Address** means, in relation to a Scheme Participant, the address of the Scheme Participant shown in the Share Register as at the Record Date.

**Regulatory Authority** includes:

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

**Sale Agent** means the agent appointed in relation to the Scheme by WAM Capital and Ozgrowth to sell the Scheme Consideration that would have otherwise been issued to Ineligible Overseas Shareholders.

**Sale Facility** means the facility described in clause 5.5 of this Scheme.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act recorded in this document, subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by WAM Capital and Ozgrowth in writing.

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

**Scheme Consideration** means the number of WAM Capital Shares to be issued per Ozgrowth Share held by a Scheme Participant, having reference to the WAM Capital VWAP and the Ozgrowth NTA, plus a premium of 7.5% to the Ozgrowth NTA, being the consideration payable by WAM Capital for the transfer of Ozgrowth Shares held by a Scheme Participant to WAM Capital.

The number of WAM Capital Shares to be issued per Ozgrowth Share held by a Scheme Participant is calculated using the formula below:

*Number of WAM Capital Shares = (Ozgrowth NTA x 1.075) / WAM Capital VWAP*

**Scheme Implementation Agreement** means the document titled "Scheme Implementation Agreement" between WAM Capital and Ozgrowth dated on or about the date of this document, relating to (among other things) the implementation of this Scheme.

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

**Scheme Participant** means each person who is a Ozgrowth Shareholder at the Record Date other than WAM Capital.

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

**Second Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard (as agreed between Ozgrowth and WAM Capital) or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard (as agreed between Ozgrowth and WAM Capital).

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

**Subsidiary** has the meaning given to that term in the Corporations Act.

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

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

**Transaction Costs** means, unless otherwise agreed in the Scheme Implementation Agreement, all of Ozgrowth's costs associated with implementing the Transaction (including fees for Ozgrowth's financial, taxation, legal and other professional advisers, counsel fees, fees of the Independent Expert, all fees payable to the Manager (including any accrued fees, termination payments and costs and expenses under the Management Agreement), all fees payable to Euroz and/or Euroz Securities (including any termination payments and costs and expenses under any agreement with those entities), all claims arising in relation to or under the Management Agreement, costs associated with the D&O Run-Off Insurance, and including GST paid on such costs to the extent not reduced by an input tax credit referable in any way to the Transaction or the period up to the Calculation Date that remain unpaid as at the Calculation Date.

**WAM Capital** means WAM Capital Limited (ACN 086 587 395).

**WAM Capital Permitted Dividend** has the meaning given to it in clause 4.5(a) of the Scheme Implementation Agreement.

**WAM Capital Register** means the register of members of WAM Capital maintained in accordance with the Corporations Act and **WAM Capital Registry** has a corresponding meaning.

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

**WAM Capital VWAP** means the one day volume weighted average price of WAM Capital Shares on the Calculation Date.

## 1.2 General interpretation

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

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

- (o) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (p) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (q) a reference to a group of persons is a reference to any two or more of them jointly and to each of them individually; and
- (r) a reference to any thing (including an amount) is a reference to the whole and each part of it.

## **2 Preliminary matters**

### **2.1 Ozgrowth**

- (a) Ozgrowth is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of the Scheme Implementation Agreement, Ozgrowth’s issued securities were 350,460,353 Ozgrowth Shares.
- (c) The Ozgrowth Shares are officially quoted on ASX.

### **2.2 WAM Capital**

- (a) WAM Capital is a public company limited by shares, incorporated in Australia and registered in New South Wales.
- (b) As at the date of the Scheme Implementation Agreement, WAM Capital’s issued securities were 904,113,461 WAM Capital Shares.
- (c) The WAM Capital Shares are officially quoted on ASX.

### **2.3 Scheme summary**

If this Scheme becomes Effective, then:

- (a) on the Implementation Date, all Scheme Shares will be transferred to WAM Capital in accordance with this Scheme;
- (b) WAM Capital must provide or procure the provision of the Scheme Consideration to each Scheme Participant in accordance with this Scheme and the Deed Poll (other than Ineligible Overseas Shareholders, who will be dealt with in accordance with clause 5.5 below); and
- (c) on the transfer of the Scheme Shares to WAM Capital, Ozgrowth will become a wholly owned Subsidiary of WAM Capital.

### **2.4 Implementation**

- (a) WAM Capital and Ozgrowth have agreed, by executing the Scheme Implementation Agreement, to implement this Scheme.
- (b) This Scheme attributes actions to WAM Capital but does not itself impose an obligation on WAM Capital to perform those actions. WAM Capital has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including to provide the Scheme Consideration.

### **3 Conditions precedent and Effectiveness**

#### **3.1 Conditions precedent to Scheme**

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

- (a) as at 8:00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll have been terminated in accordance with their terms;
- (b) all of the Conditions Precedent as set out in the Scheme Implementation Agreement (other than clause 3.1(c) of the Scheme Implementation Agreement in respect of Court approval of this Scheme) have been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement (unless they cannot be waived, in which case they must be satisfied);
- (c) the Court has approved this Scheme, with or without any modification or condition, under section 411(4)(b) of the Corporations Act, and if applicable, WAM Capital and Ozgrowth having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act and any such conditions having been satisfied or waived; and
- (d) the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

#### **3.2 Conditions precedent and operation of clauses 4 and 8**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clauses 4 and 8 of this Scheme.

#### **3.3 Certificate in relation to conditions precedent**

- (a) Ozgrowth and WAM Capital must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificate referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

#### **3.4 Effective Date**

Subject to clause 3.5, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

#### **3.5 End Date**

Without limiting any rights under the Scheme Implementation Agreement, this Scheme will lapse and be of no further force or effect if:

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

unless WAM Capital and Ozgrowth otherwise agree in writing.

## 4 Implementation

### 4.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, in accordance with section 411(10) of the Corporations Act, Ozgrowth must lodge with ASIC an office copy of the Court order approving the Scheme as soon as practicable, and in any event, by no later than 5:00pm on the first Business Day after the day on which the Court approves this Scheme, or any later date agreed in writing with WAM Capital.

### 4.2 Transfer and registration of Scheme Shares

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

- (a) the Scheme Shares must, without the need for any further act by a Scheme Participant other than acts performed as attorney and agent for the relevant Scheme Participant by Ozgrowth under clause 9.6, be transferred to WAM Capital by:
  - (i) Ozgrowth executing and delivering to WAM Capital, under the authority in clause 9.6, a valid share transfer form or forms (which may be a master transfer) to transfer all of the Scheme Shares to WAM Capital;
  - (ii) WAM Capital executing and delivering that share transfer form or those forms to Ozgrowth; and
  - (iii) where Scheme Shares are held in a CHESS holding, Ozgrowth causing a message to be transmitted to ASX Settlement in accordance with the ASX Operating Rules to transfer the Scheme Shares held by the relevant Scheme Participant from the CHESS sub-register to the issuer sponsored subregister operated by Ozgrowth, and subsequently completing a proper instrument of transfer of those Scheme Shares to WAM Capital under clauses 4.2(a)(i) and 4.2(a)(ii) above; and
- (b) immediately upon receipt of the executed share transfer form or forms, Ozgrowth must enter the name and address of WAM Capital in the Share Register as the holder of all Scheme Shares.

## 5 Consideration

### 5.1 Entitlement to consideration

Subject to the terms of this Scheme, on the Implementation Date each Scheme Participant will be entitled to and will receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with this clause 5.

### 5.2 Provision of Scheme Consideration

Subject to clauses 5.4 and 5.5, WAM Capital must:

- (a) on the Implementation Date, issue to each Scheme Participant the Scheme Consideration to which it is entitled without the need for any further act by that Scheme Participant other than acts performed as attorney and agent for that Scheme Participant by WAM Capital under clause 8.3, by causing the name and



Registered Address of that Scheme Participant to be entered into the WAM Capital Register as the holder of the New WAM Capital Shares issued to that Scheme Participant; and

- (b) within five Business Days of the Implementation Date, procure that a holding statement (or equivalent document) for that Scheme Consideration is sent to the Registered Address of that Scheme Participant.

### 5.3 Joint holders

In the case of Ozgrowth Shares held in joint names:

- (a) any Scheme Consideration to be issued under this Scheme must be issued and registered in the names of the joint holders and entry in the WAM Capital Register must take place in the same order as the holders' names appear in the Register;
- (b) the holding statement (or equivalent document) to be issued to Scheme Participants pursuant to clause 5.2(b) will be issued in the name of the joint holders and will be forwarded to the holder whose name appears first in the Share Register as at the Record Date; and
- (c) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

### 5.4 Fractional entitlements

Any fractional entitlement of a Scheme Participant to a part of a New WAM Capital Share will be rounded up or down to the nearest whole number of New WAM Capital Shares and, for the avoidance of doubt, fractional entitlements of 0.5 of a New WAM Capital Share will be rounded up.

### 5.5 Ineligible Overseas Shareholders

- (a) WAM Capital is under no obligation to issue, and will not issue, any Scheme Consideration to Ineligible Overseas Shareholders, and instead:
  - (i) all Scheme Consideration that would otherwise be required to be issued to any Ineligible Overseas Shareholder under the Scheme, if they were eligible to receive them, must be issued by WAM Capital to the Sale Agent;
  - (ii) WAM Capital must procure that, as soon as reasonably practicable, the Sale Agent sells all of the Scheme Consideration issued to the Sale Agent under clause 5.5(a)(i) on a "best endeavours" basis (and at the risk of the Ineligible Overseas Shareholders); and
  - (iii) WAM Capital must procure that the Sale Agent remits to Computershare the net proceeds of sale generated by the Sale Agent under clause 5.5(a)(ii) (after deducting any applicable brokerage and other selling costs, Taxes and charges).
- (b) Ozgrowth must, promptly after the net proceeds of sale generated by the Sale Agent under clause 5.5(a)(ii) are remitted to Computershare under clause 5.5(a)(iii), procure Computershare to pay to each Ineligible Overseas Shareholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

Where:

B = the number of New WAM Capital Shares that would have been issued to that Ineligible Overseas Shareholder had it not been an Ineligible Overseas Shareholder;

C = the total number of New WAM Capital Shares that would otherwise have been issued to all Ineligible Overseas Shareholders and which are issued to the Sale Agent; and

D = the net proceeds of sale generated by the Sale Agent under clause 5.5(a)(ii) (after deducting any applicable brokerage and other selling costs, Taxes and charges),

by either:

- (i) despatching, or procuring the despatch, of a cheque in the name of that Ineligible Overseas Shareholder by prepaid post to that Ineligible Overseas Shareholder's Registered Address, subject to clause 5.3;
  - (ii) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) ("**ADI**") in Australia notified by that Ineligible Overseas Shareholder to Ozgrowth as recorded in or for the purposes of the Register at the Record Date; or
  - (iii) paying, or procuring the payment of, the relevant amount in Australian currency to a bank account nominated by that Ineligible Overseas Shareholder by an appropriate authority from that Ineligible Overseas Shareholder to Ozgrowth.
- (c) Payment to an Ineligible Overseas Shareholder in accordance with this clause 5.5 satisfies in full the Ineligible Overseas Shareholder's right to Scheme Consideration.
  - (d) Each Ineligible Overseas Shareholder appoints Ozgrowth as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the nominee is required to provide to Ineligible Overseas Shareholders under the Corporations Act.
  - (e) Neither Ozgrowth nor WAM Capital make any representation as to the amount of proceeds of sale to be received by Ineligible Overseas Shareholders in accordance with this clause 5.5. Both Ozgrowth and WAM Capital expressly disclaim any fiduciary duty to the Ineligible Overseas Shareholders which may arise in connection with this clause 5.5.

## 5.6 Unclaimed consideration

- (a) Ozgrowth may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to Ozgrowth; 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 one year commencing on the Implementation Date and in any event not earlier than 20 Business Days after the Implementation Date, on

request from a Scheme Participant, Ozgrowth must reissue a cheque that was previously cancelled under clause 5.6(a).

- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to Scheme Consideration issued as cash proceeds to an Ineligible Overseas Shareholder which becomes 'unclaimed money' (as defined in section 7 of that Act).

## 5.7 Orders of a court or Regulatory Authority

If written notice is given to Ozgrowth (or Computershare) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority that:

- (a) requires payment to a third party of a sum in respect of Ozgrowth Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant as Scheme Consideration in accordance with this clause 5, Ozgrowth may direct WAM Capital to issue, or to issue to a trustee or nominee, the Scheme Consideration in accordance with that order; or
- (b) prevents payment of Scheme Consideration to any particular Scheme Participant in accordance with this clause 5 or the payment is otherwise prohibited by applicable law, Ozgrowth may direct WAM Capital not to issue, or to issue to a trustee or nominee, the Scheme Consideration to which the Scheme Participant would otherwise be entitled, until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that order or otherwise by law.

## 6 Dealings in Ozgrowth Shares

### 6.1 Determination of Scheme Participants

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

- (a) in the case of dealings of a type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the Ozgrowth Shares on or before the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by Computershare on or before the Record Date. Ozgrowth must register those registrable transfers or transmission applications received on or before the Record Date.

### 6.2 No issue

Ozgrowth must not issue any Ozgrowth Shares after the Effective Date and on or before the Implementation Date.

### 6.3 No registration of transfers

If this Scheme becomes Effective:

- (a) a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme, and any such disposal will be void and of no legal effect whatsoever; and

- (b) Ozgrowth must not accept for registration nor recognise for any purpose any transmission application, transfer or other dealing in respect of Ozgrowth Shares received after the Record Date, other than a transfer to WAM Capital, or to itself, in accordance with this Scheme.

#### **6.4 Statements of holding**

Subject to provision of the Scheme Consideration and registration of the transfer to WAM Capital contemplated in clause 4.2, all statements of holdings (or certificates) for Scheme Shares will cease to have any effect from the Record Date as documents of title in respect of those Scheme Shares, except as evidence of entitlement to the Scheme Consideration.

#### **6.5 Maintenance of Share Register**

- (a) In order to determine entitlements to the Scheme Consideration, Ozgrowth must maintain, or procure the maintenance of, the Share Register in accordance with this clause 6 and close the Share Register as at the Record Date.
- (b) The Share Register in this form will solely determine the entitlements of Scheme Participants to the Scheme Consideration.

#### **6.6 Details of Scheme Participants**

As soon as possible and in any event within one Business Day of the Record Date, Ozgrowth must make available to WAM Capital the details of the names, Registered Addresses and holdings of Ozgrowth Shares for each Scheme Participant as shown in the Share Register as at the Record Date, in the form WAM Capital reasonably requires.

### **7 Quotation of Ozgrowth Shares**

#### **7.1 Suspension of trading**

Ozgrowth must apply to ASX for Ozgrowth Shares to be suspended with effect from the close of trading on the Effective Date.

#### **7.2 Termination of quotation**

After the Scheme has been fully implemented and on a date after the Implementation Date to be determined by WAM Capital, Ozgrowth must apply for termination of the official quotation of Ozgrowth Shares and to have itself removed from the official list of ASX.

### **8 WAM Capital's obligations and ancillary matters**

#### **8.1 Status of New WAM Capital Shares**

The Scheme Consideration to be issued in accordance with this Scheme will:

- (a) be validly issued;
- (b) be fully paid;
- (c) be free from any Encumbrance; and
- (d) rank equally in all respects with all existing WAM Capital Shares then on issue (other than in respect of any dividend already declared or determined and not yet paid by WAM Capital, where the record date for entitlement to that dividend occurred prior to the Record Date).

## 8.2 Quotation of Scheme Consideration

WAM Capital will do everything reasonably necessary to ensure that trading in the New WAM Capital Shares commences by the first Business Day after the Implementation Date.

## 8.3 Appointment of WAM Capital as attorney and agent

On the Effective Date, each Scheme Participant, without need for any further act, irrevocably appoints WAM Capital and each of its directors and officers, jointly and severally, as that Scheme Participant's attorney and agent for the purpose of executing any form of application required for Scheme Consideration to be issued to that Scheme Participant under this Scheme.

## 8.4 Scheme Participants bound

Each Scheme Participant agrees, for all purposes including section 231 of the Corporations Act, to:

- (a) become a member of WAM Capital and to accept the Scheme Consideration issued to them in accordance with this Scheme subject to, and to be bound by, WAM Capital's constitution and other constituent documents; and
- (b) have their name and address entered into the WAM Capital Register.

# 9 General Scheme provisions

## 9.1 Consent to Court amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Ozgrowth may by its counsel consent on behalf of all persons concerned to those alterations or conditions; and
- (b) each Scheme Participant agrees to any such alterations or conditions to which counsel for Ozgrowth has consented.

## 9.2 Further action by Ozgrowth

Each Scheme Participant irrevocably consents to Ozgrowth doing all things (on its own behalf and on behalf of each Scheme Participant) necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

## 9.3 Warranties by Scheme Participants

- (a) Each Scheme Participant acknowledges that this Scheme binds Ozgrowth and all Scheme Participants, including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting.
- (b) Each Scheme Participant:
  - (i) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those shares in accordance with this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares, as relevant, constituted by or resulting from this Scheme; and
  - (iii) agrees to, at the direction of WAM Capital, destroy any share certificates relating to their Scheme Shares.

- (c) Each Scheme Participant is taken to have warranted to WAM Capital, and appointed and authorised Ozgrowth as its attorney and agent to warrant to WAM Capital, that it has no existing rights to be issued any Ozgrowth Shares, Ozgrowth options, Ozgrowth convertible notes or any other Ozgrowth securities.
- (d) Each Scheme Participant is taken to have warranted to WAM Capital, and appointed and authorised Ozgrowth as its attorney and agent to warrant to WAM Capital, that:
  - (i) all of its Scheme Shares transferred to WAM Capital under this Scheme, including any rights and entitlements attaching to those shares, will, at the date of transferring them, be fully paid and free from all:
    - (A) Encumbrances; and
    - (B) restrictions on transfer of any kind (but acknowledging that a security interest holder may potentially have an interest in the Scheme Consideration in accordance with the terms of that security interest); and
  - (ii) it has full power and capacity to transfer its Scheme Shares to WAM Capital together with any rights and entitlements attaching to those shares under the Scheme.
- (e) Ozgrowth undertakes that it will provide the warranties in clauses 9.3(c) and 9.3(d) to WAM Capital as agent and attorney of each relevant Scheme Participant.

#### **9.4 Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements) transferred under this Scheme to WAM Capital will, at the time of transfer to WAM Capital, vest in WAM Capital free from all:
  - (i) Encumbrances; and
  - (ii) restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Participant in the manner contemplated in clause 5, WAM Capital is beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Ozgrowth of WAM Capital in the Share Register as the holder of those Scheme Shares.

#### **9.5 Appointment of sole proxy**

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

- (a) each Scheme Participant is deemed to have appointed WAM Capital as attorney and agent (and to have directed WAM Capital in that capacity) to appoint any director, officer, secretary or agent nominated by WAM Capital as its sole proxy and where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;



- (b) no Scheme Participant may itself attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than under clause 9.5(a));
- (c) each Scheme Participant must take all other actions in the capacity of a registered holder of Scheme Shares as WAM Capital reasonably directs; and
- (d) each Scheme Participant acknowledges and agrees that in exercising the powers conferred by clause 9.5(a), WAM Capital and any director, officer, secretary or agent nominated by WAM Capital under that clause may act in the best interests of WAM Capital as the intended registered holder of the Scheme Shares.

## 9.6 Authority given to Ozgrowth

Each Scheme Participant, without the need for any further act, irrevocably appoints Ozgrowth and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against WAM Capital;
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing any share transfer forms,

and Ozgrowth accepts that appointment.

Ozgrowth, as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 9.6 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

## 9.7 Scheme binding

Each of the Scheme Participants:

- (a) irrevocably consents to Ozgrowth and WAM Capital doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Ozgrowth and all of the Scheme Participants (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Ozgrowth.

# 10 General

## 10.1 Stamp duty

- (a) WAM Capital will:
  - (i) pay or reimburse all stamp duty, registration fees and any similar taxes payable or assess as being payable (if any) and any related fines and penalties payable on or in respect of this Scheme; and
  - (ii) indemnify each Scheme Participant against, and agrees to reimburse and compensate it, for any liability arising from failure to comply with clause 10.1(a)(i).
- (b) However, WAM Capital need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of Ozgrowth's delay.

**10.2 Notices**

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

**10.3 Governing law**

The law in force in Western Australia governs this Scheme. The parties submit to the non-exclusive jurisdiction of the courts of that place and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

**10.4 Serving documents**

Without preventing any other method of service, any document in an action in connection with this Scheme may be served on a party by being delivered or left at that party's address set out in the Details.

**10.5 Further action**

Ozgrowth must promptly execute all documents and do all acts and things as may be necessary or expedient (on its own behalf and on behalf of each Scheme Participant) to implement and give full effect to this Scheme in accordance with its terms.

**10.6 No liability when acting in good faith**

Without prejudice to each parties' rights under the Scheme Implementation Agreement, each Scheme Participant agrees that Ozgrowth, WAM Capital and their respective directors, officers, secretaries and employees will not be liable for anything done or omitted to be done in performance of this Scheme or the Deed Poll in good faith.

**Annexure C    Deed Poll**

## **Scheme Deed Poll**

WAM Capital Limited (ACN 086 587 395)  
**(WAM Capital)**

In favour of each Scheme Participant

**MILLS OAKLEY**  
Level 7, 151 Clarence Street  
SYDNEY NSW 2000  
Telephone: +61 2 8289 5800  
Facsimile: +61 2 9247 1315  
DX 13025, SYDNEY MARKET STREET  
[www.millsoakley.com.au](http://www.millsoakley.com.au)

## Details

<b>Date</b>	2021
-------------	------

<b>BY</b>	WAM Capital Limited (ACN 086 587 395) of Level 26, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000 ( <b>WAM Capital</b> )
-----------	---

<b>IN FAVOUR OF</b>	Each person who is a Ozgrowth Shareholder at the Record Date, other than WAM Capital ( <b>Scheme Participants</b> )
---------------------	--

## Recitals

- A. WAM Capital and Ozgrowth have entered into the Scheme Implementation Agreement, under which WAM Capital has agreed to enter into this deed.
- B. Ozgrowth has agreed in the Scheme Implementation Agreement, subject to the satisfaction or waiver of certain conditions, to propose the Scheme.
- C. Under the Scheme, all Scheme Shares held by Scheme Participants will be transferred to WAM Capital for the Scheme Consideration.
- D. WAM Capital is entering into this deed to covenant in favour of the Scheme Participants that it will observe and perform its obligations under the Scheme.

## Terms and Conditions

### 1 Definitions and Interpretation

#### 1.1 Defined terms

In this deed:

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

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

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or

- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c); or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Ozgrowth Directors** means the directors of Ozgrowth.

**Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Ozgrowth and the Scheme Participants in respect of all Scheme Shares in the form agreed in writing between Ozgrowth and WAM Capital, subject to any amendment or modification made under section 411(6) of the Corporations Act and agreed to in writing by Ozgrowth and WAM Capital.

All other words and phrases used in this deed have the meaning given to them in the Scheme.

## 1.2 Interpretation

The rules for interpretation specified in clause 1.2 of the Scheme apply in interpreting this deed unless the context otherwise requires, except that references to 'this Scheme' are to be read as references to 'this deed'.

## 1.3 Nature of deed poll

WAM Capital acknowledges that:

- (a) this deed may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints Ozgrowth and any of the Ozgrowth Directors (jointly and each of them severally) as its agent and attorney to enforce this deed against WAM Capital.

## 2 Condition precedent and termination

### 2.1 Condition

WAM Capital's obligations under clause 3 are subject to the Scheme becoming Effective (other than clause 3.1(a), which applies on and from the date of this deed).

### 2.2 Termination

If:

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



then WAM Capital's obligations under this deed automatically terminate and the terms of this deed are of no further force or effect, unless WAM Capital and Ozgrowth otherwise agree in writing.

### 2.3 Consequences of termination

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

- (a) WAM Capital is released from its obligations to further perform this deed except those obligations contained in clause 7.4 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains any rights, power or remedies it has against WAM Capital in respect of any breach of this deed by WAM Capital that occurred before termination of this deed.

## 3 Obligations and Scheme Consideration

### 3.1 Performance of obligations generally

- (a) WAM Capital must comply with its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.
- (b) Subject to clause 2, WAM Capital undertakes in favour of each Scheme Participant to perform the actions attributed to it under the Scheme as if it were a party to the Scheme.

### 3.2 Undertaking to provide Scheme Consideration

Subject to clause 2, WAM Capital undertakes in favour of each Scheme Participant to:

- (a) provide or procure the provision of the Scheme Consideration to each Scheme Participant (or to the Sale Agent in respect of Ineligible Overseas Shareholders) in accordance with the terms of the Scheme; and
- (b) undertake all other actions attributed to it under the Scheme.

## 4 Representations and warranties

WAM Capital represents and warrants to each Scheme Participant that:

- (a) **(status)** it is a company limited by shares and validly existing under the laws of its place of incorporation, and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has full legal capacity and power to enter into this deed and to carry out the transactions that this deed contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and its carrying out of the transactions this deed contemplates;
- (d) **(deed effective)** this deed constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditor's rights generally) subject to any necessary stamping;

- (e) **(rank equally)** the New WAM Capital Shares to be issued as Scheme Consideration under the Scheme will:
- (i) be validly issued;
  - (ii) be fully paid;
  - (iii) be free from any Encumbrance;
  - (iv) rank equally in all respects with all existing WAM Capital Shares on issue as at the Implementation Date (other than in respect of any dividend already declared or determined and not yet paid by WAM Capital, where the record date for entitlement to that dividend occurred prior to the Record Date); and
  - (v) be approved for official quotation by ASX, subject to any conditions which ASX may reasonably require and which are acceptable to both WAM Capital and Ozgrowth, acting reasonably and promptly;
- (f) **(no restrictions)** this deed does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound; and
- (g) **(solvency)** it is not Insolvent.

## 5 Continuing obligations

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

- (a) WAM Capital has completely performed its obligations under this deed; or
- (b) the earlier termination of this deed under clause 2.2.

## 6 Variation and assignment

### 6.1 Variation

This deed or any right created under it may not be varied, altered or otherwise amended unless:

- (a) before the Second Court Date:
  - (i) Ozgrowth and WAM Capital agree to that variation, alteration or amendment in writing; and
  - (ii) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme; or
- (b) on or after the Second Court Date, WAM Capital agrees to a variation in writing as approved by the Court,

in any of which events, WAM Capital must enter into a further deed poll in favour of Scheme Participants giving effect to that variation.

### 6.2 Assignment

The rights and obligations of a person under this deed are personal. They cannot be assigned, novated, encumbered, charged or otherwise dealt with at law or in equity without the prior written consent of WAM Capital, and any purported dealing in contravention of this clause 6.2 is invalid.

---

## **7 General**

---

### **7.1 Notices**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing and sent to the address stated in the Details, or as otherwise advised by WAM Capital from time to time, and marked to the attention of the person stated in the Details.

### **7.2 Governing law**

- (a) This deed is governed by the laws in force of Western Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with the Scheme, and waive any right they might have to claim that those courts are an inconvenient forum.

### **7.3 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

### **7.4 Stamp duty and registration fees**

WAM Capital must:

- (a) pay or reimburse all stamp duty, registration fees and any similar taxes payable or assessed as being payable, including any related fines, interest and penalties, in respect of or in connection with this deed, the performance of this deed and each transaction effected by or made or any instrument executed under this deed or the Scheme, including the transfer of the Scheme Shares to WAM Capital under the Scheme; and
- (b) indemnify each Scheme Participant against, and agrees to reimburse and compensate it, for any liability arising from failure to comply with clause 7.4(a),

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

### **7.5 Cumulative rights**

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

### **7.6 Waiver of rights**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

**7.7 Consent**

WAM Capital consents to Ozgrowth producing this deed to the Court.

**7.8 Further assurances**

WAM Capital must promptly do all further acts and execute and deliver all further documents (on its own behalf or on behalf of each Scheme Participant) necessary or desirable to give full effect to this deed and the transactions contemplated by this deed.

**7.9 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 7.9 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

## Execution page

**EXECUTED** as a deed poll

**EXECUTED** by **WAM CAPITAL LIMITED (ACN 086 587 395)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director / Company Secretary  
(delete as applicable)

\_\_\_\_\_  
Name of Director  
(Please print)

\_\_\_\_\_  
Name of Director / Company Secretary  
(Please print)