

Disclosure of beginning to have substantial holding

*Sections 276, Financial Markets Conduct Act 2013*

**To** NZX Limited

and

**To** Tourism Holdings Limited

Date this disclosure made: 14 June 2025

Date on which substantial holding began: 14 June 2025

**Substantial product holder(s) giving disclosure**

Full name(s):

5382917 Limited (**SPV**)

BGH Capital IIA Pty Ltd in its capacity as trustee for BGH Capital Trust IIA, BGH Capital IIB Pty Ltd in its capacity as trustee for BGH Capital Trust IIB, BGH Capital Offshore GP II Limited as general partner of BGH Capital Offshore II, LP (together the **BGH Fund**) and BGH Capital Pty Ltd (ACN 617 386 982) (the **Manager**) in its capacity as manager or adviser to the constituent entities of the BGH Fund (the BGH Fund and the Manager together **BGH**).

**Summary of substantial holding**

Class of quoted voting products: ordinary shares (**Shares**) in Tourism Holdings Limited (NZX Code: THL) (**THL**)

Summary for SPV

For this disclosure,—

- (a) total number held in class: 39,345,432
- (b) total in class: 221,098,068
- (c) total percentage held in class: 17.795%

Summary for BGH

For this disclosure,—

- (a) total number held in class: 39,345,432
- (b) total in class: 221,098,068
- (c) total percentage held in class: 17.795%

## Details of relevant interests

### Details for SPV

Nature of relevant interest: Conditional power to control the disposal of Shares pursuant to the Co-operation Agreement (as defined below). A copy of the Co-operation Agreement is attached in Schedule 1 (15 pages).

For that relevant interest,—

- (a) total number held in class: 26,079,549
- (b) percentage held in class: 11.795%
- (c) current registered holder(s): Barmil Enterprises Pty Ltd as trustee for Lurk Investment Trust, Eastglo Pty Ltd as trustee for the Trouchet Super Fund and KRLG Pty Ltd as trustee for the KL Trust (together, the **Trouchet Shareholders**)
- (d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): the power to control the acquisition or disposal of Shares and, once the relevant on-market trades have been settled (expected to be Wednesday, 18 June 2025), registered holder and beneficial owner of those Shares. A copy of each Agreement is attached in Schedule 2 (23 pages in total).

For that relevant interest,—

- (a) total number held in class: 13,265,883
- (b) percentage held in class: 6.000%
- (c) current registered holder(s): ANZ Custodial Services New Zealand Limited for 8,843,922 Shares and Central Securities Depository Limited for 4,421,961 Shares
- (d) registered holder(s) once transfers are registered: SPV

## Details of transactions and events giving rise to substantial holding

Details of the transactions or other events requiring disclosure:

### Details for BGH

By virtue of the deeming provision under section 237 of the Financial Markets Conduct Act, BGH is deemed to have the same relevant interests as SPV set out above.

## Co-operation agreement

On 14 June 2025, SPV and the Trouchet Shareholders entered into a co-operation and exclusivity agreement (the **Co-operation Agreement**). Under the Co-operation Agreement, the parties have agreed to work together to consider and, if applicable, negotiate and implement the potential acquisition by SPV of all or a substantial part of the Shares or THL's assets and business by way of

a takeover offer under the Takeovers Code, a scheme of arrangement under Part 15 of the Companies Act 1993 or other transaction structure.

Under the Co-operation Agreement, the Touchet Shareholders have agreed not to sell their Shares during the term of the Co-operation Agreement without the prior written consent of SPV (and in certain other limited circumstances). The Co-operation Agreement terminates on the earlier to occur of: (i) 14 December 2025; (ii) the date on which a scheme implementation agreement is entered into; and (iii) the date the independent directors of Target unanimously recommend to Target shareholders that they accept a takeover offer under the Takeovers Code, (iv) or earlier by agreement in writing between SPV and the Touchet Shareholders. Accordingly, SPV has the power to procure that the Touchet Shareholders (who in aggregate own 26,079,549 Shares) do not dispose of those Shares during the term of the Co-operation Agreement.

A copy of the Co-operation Agreement is attached as Schedule 1 (15 pages).

### ***Acquisition of shares***

On 14 June 2025, SPV entered into:

- an agreement with ANZ New Zealand Investments Limited and ANZ Bank New Zealand Limited (together **ANZ**) under which ANZ irrevocably committed to sell, and SPV irrevocably agreed to purchase, 8,843,922 Shares on-market for an aggregate consideration of NZ\$20,341,020.60;
- an agreement with Accident Compensation Corporation (**ACC**) under which ACC irrevocably committed to sell, and SPV irrevocably agreed to purchase, 4,421,961 Shares on-market for an aggregate consideration of NZ\$9,949,412.25; and

together the **Agreements**. A copy of each Agreement is attached in Schedule 2 (23 pages in total).

The on-market trades contemplated in the Agreements are expected to take place on Monday, 16 June 2025, with settlement to occur on Wednesday, 18 June 2025.

Under each Agreement SPV has also agreed to top up the amount paid to the relevant counterparty for the on-market acquisition of Shares by the difference (if any, and assuming the difference is a positive number) between:

- (a) the price per Share paid by SPV for the on-market acquisition (plus any brokerage fees or any other transaction fees paid by SPV in respect of the on-market acquisition) (the **Sale Price**); and
- (b) the price per Share payable by SPV under any scheme of arrangement under Part 15 of the Companies Act proposed by SPV or one of its related companies or associates in relation to all of the Shares which is implemented, or full or partial takeover offer under the Takeovers Code which is made by SPV or one of its related companies or associates and which is declared unconditional, within 12 months after the date of the relevant Agreement,

multiplied by the number of Shares which are the subject of the relevant Agreement.

Under each Agreement SPV has also agreed to top up the amount paid to the relevant counterparty for the on-market acquisition of Shares by the difference (if any, and assuming the difference is a positive number) between:

- (a) the Sale Price; and
- (b) the price per Share received by SPV (net of brokerage or transaction fees) under sale to a third party occurring within 12 months of the date of the relevant Agreement under a competing scheme of arrangement, a competing takeover offer, the compulsory acquisition process under the Takeovers Code, an on-market sale or off-market sale,

multiplied by the number of Shares which are the subject of the relevant Agreement (or pro-rated in respect of a sale of only some of SPV's Shares).

Under the Agreement with ANZ, SPV has agreed that where it undertakes any on-market acquisition of Shares from a third party that occurs within 20 business days after the date of the ANZ Agreement, and the price per Share paid by SPV under any such acquisition (net of brokerage and transaction fees) is more than 5 cents greater than the Sale Price, SPV will pay ANZ the equivalent of the increment above the amount which is 5 cents greater than the Sale Price in respect of half the number of Shares which are the subject of the Agreement between SPV and ANZ.

SPV is wholly beneficially owned by the BGH Fund. The Manager is the manager or adviser to the constituent entities of the BGH Fund. Accordingly, for the purposes of the relevant legislation, the BGH Fund, the Manager and SPV are associates in respect of Shares held by SPV.

#### **Additional information**

Address(es) of substantial product holder(s): Level 26, 101 Collins Street, Melbourne VIC 3000, Australia

Contact details: James Cooney, +64 9 916 8800, james.cooney@bellgully.com

Nature of connection between substantial product holders: As noted above, SPV is wholly beneficially owned by the BGH Fund. The Manager is the manager or adviser to the constituent entities of the BGH Fund.

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Barmil Enterprises Pty Ltd as trustee for Lurk Investment Trust, Eastglo Pty Ltd as trustee for the Trouchet Super Fund, KRLG Pty Ltd as trustee for the KL Trust, ACC and ANZ.

#### **Certification**

I, Hari Morfis, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

## **Schedule 1**

### **Co-operation and Exclusivity Agreement**

# **Co-operation and Exclusivity Agreement**

**5382917 Limited**

SPV

**and**

**The entities listed in the Schedule**

Trouchet Entities

**Date** 14 June 2025

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This **Co-operation and Exclusivity Agreement** is made on 14 June 2025

**between** (1) **5382917 Limited** (company number 9337729) (**SPV**); and  
**and** (2) The entities listed in the Schedule (the **Trouchet Entities**).

## Introduction

- A. The Trouchet Entities own shares in Target.
- B. The parties agree to work together to pursue and, if applicable, implement the Proposal.
- C. This Agreement governs the relationship between the parties for the purposes of considering and, if applicable, negotiating and implementing the Proposal.

## It is agreed

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Business Day** is a day (other than a Saturday, Sunday or public holiday) that banks are open for general banking business in Auckland, New Zealand, Brisbane, Australia and Melbourne, Australia;

**Companies Act** means the Companies Act 1993;

**Competing Proposal** means an offer, proposal, expression of interest, transaction or arrangement which is proposed by a Third Party pursuant to which a Third Party will, if the offer, proposal, expression of interest, proposed transaction or arrangement is implemented:

- (a) have a Relevant Interest in 10% or more of the Target Shares;
- (b) acquire Control of Target or the Target Group; or
- (c) directly or indirectly acquire, merge with, or acquire (or have the right to so merge with or acquire) a significant economic interest in Target or all or a significant part of the business of the Target Group, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition or allotment, capital reduction, share buy-back, sale or purchase of a significant or material part of the assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the Target Group or other synthetic merger or any other transaction or arrangement,

or would otherwise cause the Proposal to not proceed;

**Confidential Information** has the meaning given to that term in clause 7;

**Control** means, in relation to a person (the “relevant person”) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person;
- (b) controls, or has the power to control, the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person,

and **Controlled** has a corresponding meaning;

**Derivative** means any agreement or arrangement which has an economic effect which is equivalent or substantially similar to the acquisition, holding or disposition of financial products (including, physically-settled derivatives, cash-settled derivatives, swaps and contracts for difference);

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

- (a) 5.00pm on 14 December 2025 (or such other date that the parties may agree in writing);
- (b) the date on which the Scheme Implementation Agreement is entered into; and
- (c) the date on which the independent directors of Target unanimously recommend to Target shareholders that they accept an Offer made in relation to the Proposal (provided that such recommendation may be subject to (A) the independent adviser's report concluding, and continuing to conclude, that the Offer price is within or above the independent adviser's valuation range for the Target shares; and (B) there being no superior proposal);

**FMCA** means the Financial Markets Conduct Act 2013;

**Offer** has the meaning given to that term in the Takeovers Code;

**Proposal** means the potential acquisition by SPV of all or a substantial part of the Target Shares or Target's assets and business by way of a takeover offer under the Takeovers Code, a scheme of arrangement under Part 15 of the Companies Act or other transaction structure;

**Related Company** has the meaning given to it in section 2(3) of the Companies Act provided that, for the purposes of this Agreement a reference to "company" in that section refers to any body corporate notwithstanding its jurisdiction of incorporation;

**Related Party** means, in relation to a company or body corporate:

- (a) a Related Company of that company or body corporate;
- (b) any person which Controls that company or body corporate, is Controlled by that company or body corporate, or is Controlled by the same person which Controls that company or body corporate;
- (c) in relation to the Trouchet Entities only, includes Luke Trouchet and Karl Trouchet; and
- (d) in relation to SPV only, includes the constituent entities comprising BGH Capital Fund II;

**Relevant Interest** has the meaning given to that term in the FMCA;

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

- (a) the directors, officers, members and employees of that party and its Related Parties; and
- (b) the agents and advisers of that party (or its Related Parties), but only to the extent acting in that capacity and on the instruction of that party (or its Related Parties) in accordance with its engagement terms, in connection with the Proposal (other than common consortium advisers or agents engaged by the parties in connection with the Proposal);

**Scheme Implementation Agreement** means the agreement or deed (as the case may be) between Target and SPV pursuant to which Target will be acquired via a scheme of arrangement under Part 15 of the Companies Act;

**Takeovers Code** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

**Takeovers Panel** means the Takeovers Panel established by the Takeovers Act 1993;

**Target** means Tourism Holdings Limited;

**Target Group** means Target and each of its subsidiaries;

**Target Shares** means fully paid ordinary shares in the capital of Target;

**Third Party** means a person other than a party or any of its Related Parties;

**Transaction Documents** means all material documentation in relation to implementation of the Proposal, including any Scheme Implementation Agreement, any offer document (as that term is defined in the Takeovers Code), any voting or lock-up agreement, any shareholders' agreement among the parties in relation to Target, SPV or a Related Company of SPV and any financing agreements; and

**Trouchet Shares** means the Target Shares held by Trouchet Entities as set out in the Schedule.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are inserted for convenience only and are to be ignored in construing this Agreement;
- (b) a reference to a statute includes all regulations under and amendments to that statute and any enactment passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- (c) the singular includes the plural and vice versa, and a gender includes each other gender;
- (d) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;

- (e) **voting rights** has the meaning given to it in the Takeovers Code;
- (f) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **subsidiary** means a subsidiary as defined in sections 5 to 8 of the Companies Act;
- (h) **holding company** means a holding company as defined in section 5 of the Companies Act;
- (i) wherever the words **includes** or **including** are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- (j) references to a party include that party’s successors and permitted assigns;
- (k) a reference to any document or instrument includes any variation or replacement of it; and
- (l) nothing is to be construed adversely to a party just because that party put forward this Agreement or the relevant part of this Agreement.

## **2. Proposed transaction**

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### **2.1 Proposed transaction**

- (a) The parties agree to work together on the terms set out in this Agreement to consider, negotiate and implement the Proposal.
- (b) This Agreement governs the relationship between parties for the purposes of considering and progressing the Proposal.

## **3. Conduct of the Proposal**

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### **3.1 Conduct of the Proposal**

Except to the extent otherwise agreed:

- (a) SPV will lead discussions and negotiations with Target in relation to the Proposal (which, for the avoidance of doubt, includes discussions and negotiations in relation to any Scheme Implementation Agreement or any Offer);
- (b) SPV will consult with the Trouchet Entities in respect of all fundamental matters and material decisions relating to the Proposal and the Transaction Documents (including consideration, any non-standard conditions, overall timetable, the waiver of any conditions, any response to any competing proposal under any Scheme Implementation Agreement and the exercise of any termination right);
- (c) SPV will make all material decisions in relation to the Proposal (before and after any Scheme Implementation Agreement is entered into or any Offer is made); and
- (d) each party will keep the other parties promptly informed of any information received from Target that is material to its consideration or negotiations in relation to the Proposal.

### **3.2 No ability to bind**

No party may legally bind any other party.

## **4. Exclusivity**

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### **4.1 Exclusivity**

During the Exclusivity Period, each of the Trouchet Entities undertakes to SPV that it will not, and must ensure that its Related Parties and Representatives (alone or acting in concert with any Third Party) do not, directly or indirectly, except with the prior written consent of SPV:

- (a) enter into any agreement, arrangement or understanding (including participating in any consortium, joint bidding structure and other structure) in relation to an actual, proposed or potential Competing Proposal;
- (b) be involved in a Competing Proposal (including agreeing to roll an existing interest in Target Shares into a Competing Proposal);
- (c) accept in respect of, sell or agree to sell any of, its Target Shares to a Third Party proposing or making a Competing Proposal;
- (d) make any public statement that it will accept or propose to accept a Competing Proposal; or
- (e) take any step, or do any act, matter or thing, directly or indirectly which is intentionally designed to frustrate the Proposal (provided that, to avoid doubt, the giving of notice under clause 6.1(a) shall be deemed not to be an act intentionally designed to frustrate the Proposal).

## **5. Standstill and other dealings**

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### **5.1 Standstill**

- (a) Subject to clause 5.1(b), during the Exclusivity Period, each of the Trouchet Entities undertakes to SPV that it will not, and must ensure that its Related Parties and Representatives (alone or acting in concert with any Third Party) do not:
  - (i) directly or indirectly sell, assign, transfer or otherwise dispose of a Relevant Interest in any Target Shares;
  - (ii) increase its Relevant Interest in any Target Shares;
  - (iii) enter into any Derivative in respect of Target Shares; or
  - (iv) aid, abet, counsel, assist, facilitate or induce any other person in doing, or publicly announce that it will do, any of the things mentioned in this clause 5.1(a).
- (b) For the avoidance of doubt, nothing in clause 5.1(a) prevents:
  - (i) any of the Trouchet Entities (or any of their Related Parties or Representatives) from taking any steps to implement the Proposal;
  - (ii) any of the Trouchet Entities (or any of their Related Parties or Representatives) acquiring or disposing of a Relevant Interest in Target Shares as a result of:

- (A) acceptances of the Proposal or implementation of the Proposal; or
- (B) the terms of this Agreement; or
- (iii) any action taken with the prior written consent of SPV.

## 6. Withdrawal and termination

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### 6.1 Termination and withdrawal

- (a) This Agreement terminates automatically at the end of the Exclusivity Period (or earlier by agreement in writing between SPV and the Trouchet Entities).
- (b) On and from termination of this Agreement, other than as set out in clause 6.2:
  - (i) this Agreement will become void and of no further effect; and
  - (ii) the parties will cease to have any rights or obligations under this Agreement.

### 6.2 Rights and obligations surviving termination and withdrawal

Any claim that a party has against another party at the time of termination in respect of a breach of obligations under this Agreement prior to the time of termination, survives the termination of this Agreement under clause 6.1(a).

## 7. Confidentiality

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- (a) In this Agreement, **Confidential Information** means this Agreement, the Transaction Documents, the status of negotiations (and any other agreements) with Target and between the parties and any confidential information provided by one party to another or to any person but excludes any information that:
  - (i) at the time it was provided to the party, was lawfully in the possession of the party and without breach of any duty or obligation; or
  - (ii) has been provided to the party but subsequently, through no act or omission of the party (or any person to whom it discloses that information) becomes available from another source and is not subject to any duty or obligation as to confidence.
- (b) Each party must keep confidential and must not disclose, and must procure that its Related Parties and its Representatives keep confidential and do not disclose the Confidential Information except:
  - (i) with the prior written consent of the other parties;
  - (ii) where the information is in or has come into the public domain other than due to a breach of any obligation of confidentiality owed by that party;
  - (iii) to the extent required by any applicable law, order or rule of any court or government agency or the rules of a recognised stock exchange provided that before a party makes any disclosure under this clause 7.1(b)(iii), it must, to the extent practicable having regard to the required timing of the disclosure, consult in good faith with the other parties as to the need for and form of that disclosure; or

- (iv) to a Representative of that party and of its Related Parties and related trusts and to a prospective debt or equity financing provider in connection with the Proposal, in each case on a need to know basis and where those persons undertake to keep information disclosed confidential or are otherwise bound by or subject to a similar confidentiality obligation.

## **8. Warranties**

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### **8.1 Mutual warranties**

Each party represents and warrants to the others that, as at the date of this Agreement:

- (a) it is duly incorporated under the laws of the place of its incorporation;
- (b) it has the power and authority to sign this Agreement and perform and observe all its terms;
- (c) this Agreement has been duly executed and is a legal valid and binding agreement enforceable against it in accordance with its terms; and
- (d) it is not bound by any contract which may restrict its right or ability to enter into or perform this Agreement.

## **9. Relationship between the parties**

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### **9.1 No partnership or joint venture**

- (a) Nothing in this Agreement will be construed as giving rise to a partnership, joint venture, fiduciary relationship or agency relationship between the parties.
- (b) No party may act as the agent of, assume any obligation or responsibility on behalf of any other party or in any way bind or pledge the credit of any other party.

### **9.2 No control over voting rights**

Notwithstanding any other provision of this Agreement, nothing in this Agreement or any other document contemplated by or entered into to give effect to this Agreement, confers on SPV the ability or right to hold or control (as defined in the Takeovers Code) the voting rights or any other rights attaching to the Troughet Shares.

## **10. General**

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### **10.1 Notices**

#### **How notice to be given**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(i) if to SPV:

Address: Level 26, 101 Collins Street, Melbourne VIC 3000

Email: hmorfis@bghcapital.com  
For the attention of: Hari Morfis

(ii) if to the Trouchet Entities:

Address: 24 Balmoral Terrace, East Brisbane, QLD 4169

Email: luketrouchet@icloud.com  
For the attention of: Luke Trouchet

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (d) must be delivered by hand or sent by email to the address, in accordance with clause 10.1(b).

**When notice take to be received**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement is taken to be received by the addressee:

(a) (in the case of email):

- (i) when the sender receives an automated message confirming delivery; or
- (ii) if later, two 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 the email has not been delivered; and

(b) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received (in the place of receipt) on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

**Notice by SPV to the Trouchet Entities**

A notice by SPV to the Trouchet Entities in accordance with this clause 10.1 shall be deemed to be notice to all Trouchet Entities, and shall be deemed to be received by all such persons at the same time as provided for in this clause 10.1.

## 10.2 Entire agreement

This Agreement contains the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

### **10.3 Amendment**

This Agreement cannot be amended, modified, varied or supplemented except in writing signed by the parties.

### **10.4 Assignment**

This Agreement is binding on, and continues for the benefit of, the parties and their respective successors and permitted assignees or transferees. No party can assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other parties.

### **10.5 Specific performance**

Each party acknowledges that, in the event of any breach or threatened breach of this Agreement by a party (the “first party”), damages may not be an adequate remedy and any other party (each a “non-breaching party”) may seek specific performance of the terms of this Agreement or injunctive relief or any other similar remedy, in addition to any other remedies available at law or in equity under or independently of this Agreement. In any proceeding brought by the non-breaching party seeking such equitable relief for a breach or threatened breach of this Agreement, the first party must not claim that the breach or threatened breach is one which may not, or ought not to be, the subject of equitable relief.

### **10.6 Severability**

If any provision of this Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision is to be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or, if this is not possible, then such provision must be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.

### **10.7 Further assurances**

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

### **10.8 Future obligations**

For the avoidance of doubt, nothing in this Agreement requires any of the parties to enter into (or agree to enter into) the Scheme Implementation Agreement or to give a takeover notice (or agree to give a takeover notice) in respect of the Target Shares.

### **10.9 No waiver**

No failure or delay on the part of any party to exercise any right or remedy under this Agreement is a waiver of such right or remedy nor does any single or partial exercise of any right or remedy under this Agreement preclude the exercise of any other right or remedy or preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

### **10.10 Compliance with law**

Nothing in this Agreement will require any party to do any act or thing in contravention of the Takeovers Code, the Companies Act or the FMCA.

**10.11 Counterparts**

This Agreement may be signed in any number of counterparts (included by scanned PDF) all of which, when taken together, constitute one and the same instrument.

**10.12 Governing law**

This Agreement is governed by, and must be construed in accordance with, the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

## Execution

**Executed** as an agreement.

**5382917 Limited** by:



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Director / Authorised signatory

Sir Ralph Norris

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Print Name

**Barmil Enterprises Pty Ltd** as  
trustee for Lurk Investment Trust by:

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Director

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Print Name

**Eastglo Pty Ltd** as trustee for the  
Trouchet Super Fund by:

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Director

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Print Name

**KRLG Pty Ltd** as trustee for the KL  
Trust by:

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Director

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Print Name

## Execution

**Executed** as an agreement.

**5382917 Limited** by:

\_\_\_\_\_  
Director / Authorised signatory

\_\_\_\_\_  
Print Name

**Barmil Enterprises Pty Ltd** as  
trustee for Lurk Investment Trust by:

\_\_\_\_\_

Director

*Luke Trouchet*

\_\_\_\_\_  
Print Name

**Eastglo Pty Ltd** as trustee for the  
Trouchet Super Fund by:

\_\_\_\_\_

Director

*Luke Trouchet*

\_\_\_\_\_  
Print Name

**KRLG Pty Ltd** as trustee for the KL  
Trust by:

\_\_\_\_\_

Director

*Luke T Trouchet*

\_\_\_\_\_  
Print Name

**Schedule – Trouchet Entities**

| Entity                                                          | Number of Target Shares |
|-----------------------------------------------------------------|-------------------------|
| Barmil Enterprises Pty Ltd as trustee for Lurk Investment Trust | 25,653,539              |
| Eastglo Pty Ltd as trustee for the Trouchet Super Fund          | 231,366                 |
| KRLG Pty Ltd as trustee for the KL Trust                        | 194,644                 |

## **Schedule 2**

### Escalator Agreements

# **Escalator Agreement**

**relating to**

shares in Tourism Holdings Limited

**The shareholder named in the Schedule to this Agreement**

Shareholder

**and**

**5382917 Limited**

SPV

**Date** 14 June 2025

This **Agreement** is made on 14 June 2025

between (1) **The shareholder named in the Schedule to this Agreement (Shareholder)**

and (2) **5382917 Limited (SPV)**

## **Introduction**

- A. The Shareholder has agreed to sell, and SPV has agreed to purchase, the Sale Shares through an on-market transfer on NZX between the parties on 16 June 2025 (the **Sale**).
- B. As part of the consideration for the Sale, SPV has agreed to pay a Top Up Amount and/or a Matching Amount to the Shareholder in certain circumstances.
- C. This Agreement sets out the terms and conditions on which SPV has agreed to pay the Top Up Amount and a Matching Amount to the Shareholder.

## **It is agreed**

### **1. Definitions and interpretation**

---

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Associate** has the meaning given to it in the Takeovers Code;

**Bidder** means:

- (a) in the case of a Scheme, the promoter of the Scheme; or
- (b) in the case of a Takeover Offer, the offeror of the Takeover Offer,

in each case being either SPV or a Related Company or Associate of SPV;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand;

**Companies Act** means the Companies Act 1993;

**Company** means Tourism Holdings Limited;

**Consideration** means, in relation to each Sale Share, the aggregate of:

- (a) the Sale Price;
- (b) any Top Up Amounts divided by the number of the Sale Shares; and
- (c) any Matching Amounts divided by the number of the Sale Shares;

**Matching Amount** has the meaning given to it in clause 5(b);

**Matching Amount Acquisition** has the meaning given to it in clause 5(a);

**On-Market** means an acquisition of Shares that is traded on, or reported through, the trading system operated by NZX Limited or ASX Limited;

**Other Shares** means all of the Shares from time to time held or controlled by the Shareholder other than the Sale Shares, including any Shares acquired by the Shareholder after the date of this Agreement;

**Premium Sale** has the meaning given to it in clause 3.2(b);

**Premium Sale Price** means the price per Share, in cash in New Zealand dollars, received by SPV (net of any brokerage fees or any other transaction fees (on a per Share basis)) under a Premium Sale;

**Qualifying Sale** has the meaning given to it in clause 3.2(a);

**Related Company** has the meaning given to it in section 2(3) of the Companies Act provided that for the purposes of this Agreement a reference to “company” in that section refers to any body corporate notwithstanding its jurisdiction of incorporation;

**Relevant Transaction Price** means the SPV Control Transaction Price or the relevant Premium Sale Price (as applicable);

**Sale** has the meaning given to it in paragraph A of the Introduction;

**Sale Price** means the price per Share set out in the second column of the third row of the Schedule to this Agreement, plus any brokerage fees or any other transaction fees (on a per Sale Share basis) paid by SPV in respect of the acquisition of the Sale Shares;

**Sale Shares** means the number of Shares set out in the second column of the second row of the Schedule to this Agreement;

**Scheme** has the meaning given to it in clause 3.1(a)(i);

**Share** means an ordinary share in the Company;

**SIA** has the meaning given to it in clause 3.1(a)(i);

**SPV Control Transaction Price** means the price per Share, in cash in New Zealand dollars, payable by the Bidder under the Scheme or the Takeover Offer, as the case may be;

**Takeover Offer** has the meaning given to it in clause 3.1(b)(i);

**Takeovers Code** means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR2000/210), as amended by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

**Third Party** means a person other than SPV or any of SPV’s Related Companies, shareholders, affiliates or Associates; and

**Top Up Amount** has the meaning given to it in clause 4.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) references to dates and times are to dates and times in New Zealand;
- (b) references to currency are to New Zealand currency;
- (c) headings are for convenience only and do not affect interpretation;
- (d) a reference to a statute or other law is a reference to a New Zealand statute or other law and includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to any document or agreement (including this Agreement) is to that document or agreement as amended, varied, supplemented, novated or replaced from time to time;
- (f) no term of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or a provision of it; and
- (g) a reference to “including” means “including but not limited to” and “include” and “includes” have corresponding meanings.

## 2. Commitment to execute Sale

---

### 2.1 Irrevocable undertaking

The Shareholder irrevocably undertakes to sell, and SPV irrevocably undertakes to purchase, the Sale Shares through an on-market transfer on NZX between the parties on 16 June 2025.

### 2.2 Further actions

Each party agrees to take any steps necessary to give effect to its undertaking under clause 2.1.

## 3. Payment of Top Up Amount

---

### 3.1 SPV control transaction

- (a) If within 12 months of the date of this Agreement:
  - (i) SPV or one of its Related Companies or Associates enters into a scheme implementation agreement (**SIA**) with the Company to implement a scheme of arrangement under Part 15 of the Companies Act in relation to the acquisition by that party (or its nominee) of all of the Shares (**Scheme**);
  - (ii) the SPV Control Transaction Price for the Scheme is greater than the Sale Price; and
  - (iii) the Scheme is implemented in accordance with the SIA,

then SPV will pay (or procure the payment of) the Top Up Amount to the Shareholder within five Business Days after the date on which the Scheme is implemented in accordance with its terms.

- (b) If within 12 months of the date of this Agreement:
- (i) SPV or one of its Related Companies or Associates gives a notice under rule 41 of the Takeovers Code of its intention to make a takeover offer for all or part of the equity securities in the Company (**Takeover Offer**);
  - (ii) the SPV Control Transaction Price for the Takeover Offer is greater than the Sale Price; and
  - (iii) the Takeover Offer is declared unconditional in all respects in accordance with rule 49C(3) of the Takeovers Code,

then SPV will pay (or procure the payment of) the Top Up Amount to the Shareholder within five Business Days after the date on which the Takeover Offer is declared unconditional in all respects.

### 3.2 Premium Sale

If within 12 months of the date of this Agreement:

- (a) SPV sells any Shares to a Third Party under a competing scheme of arrangement under Part 15 of the Companies Act, a competing takeover offer under the Takeovers Code, the compulsory acquisition process under the Takeovers Code, an on-market sale or an off-market sale (a **Qualifying Sale**); and
- (b) the Premium Sale Price under the Qualifying Sale is greater than the Sale Price (a **Premium Sale**),

then SPV will pay (or procure the payment of) the Top Up Amount to the Shareholder within five Business Days after the date SPV receives the consideration for that Premium Sale.

### 3.3 General

- (a) Any Top Up Amount and any Matching Amount payable to the Shareholder by SPV (or by the Bidder or any other party following procurement by SPV) is agreed by the parties to be additional consideration paid by SPV for the Sale Shares.
- (b) Notwithstanding any other provision of this Agreement:
  - (i) if a Top Up Amount is paid by SPV under clause 3.2 and a Top Up Amount subsequently becomes payable by SPV under clause 3.1, then the Top Up Amount payable by SPV under clause 3.1 will be reduced by an amount equal to the aggregate of any such Top Up Amounts the Shareholder has been paid by SPV under clause 3.2; and
  - (ii) except to the extent that clause 4(c) applies, a Top Up Amount is not payable in any circumstances where it would result in a Top Up Amount being payable in respect of more than the number of the Sale Shares (including where the aggregate proportion for Premium Sales where clause 4(d) applies has reached 100%).
- (c) If within 12 months of the date of this Agreement SPV transfers the Sale Shares to one or more of its Related Companies, shareholders, affiliates or Associates, then

references in clauses 3.2 and 4 to SPV are to be read as a reference to such transferee or transferees in order to give effect to the intention of this Agreement.

- (d) For the purposes of the financial arrangements rules in the Income Tax Act 2007, if a Top Up Amount or a Matching Amount is payable under this Agreement, the parties agree that:
  - (i) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Sale Share, on the date this Agreement was entered into, if payment had been required in full at the time the first right in each of the Sale Shares was transferred;
  - (ii) the Consideration is the value of each Sale Share; and
  - (iii) they will compute their taxable income for the relevant period on the basis that the Consideration for each Sale Share includes no capitalised interest, and will file their tax returns accordingly.

#### 4. Calculating the Top Up Amount

---

- (a) Subject to clauses 4(b), 4(c) and 4(d), the **Top Up Amount** is the amount calculated in accordance with the following formula:

$$SS \times (RTP - SP)$$

where:

**SS** is:

- (i) where clause 3.1 applies, the number of Sale Shares;
- (ii) where clause 3.2 applies, the number of Sale Shares held by SPV that are sold under that Premium Sale;

**RTP** is the Relevant Transaction Price; and

**SP** is (A) the Sale Price plus (B) the aggregate of any Matching Amounts paid under clause 5(a) divided by the number of Sale Shares.

- (b) The parties agree that if the amount calculated under clause 4(a) is a negative amount, then the Top Up Amount will be zero and no amount will be payable to the Shareholder under clause 3.
- (c) If the Shares are subdivided or consolidated (or there is any other similar proportionate capital reconstruction) during the period commencing on the date of this Agreement and ending on:
  - (i) in relation to a Scheme, the date on which the Scheme is implemented in accordance with the SIA; or
  - (ii) in relation to a Takeover Offer, the date on which the Takeover Offer is declared unconditional in all respects in accordance with rule 49C(3) of the Takeovers Code; or
  - (iii) in relation to a Premium Sale, the date of completion of that sale,

then the Top Up Amount will be adjusted as appropriate to take account of that subdivision or consolidation (or other similar proportionate capital reconstruction) of the Shares in order to give effect to the intention of this clause 4.

- (d) For the purposes of limb (ii) of the definition of “SS”, if the number of Shares that SPV sells under that Premium Sale is less than the total number of Shares that SPV holds on the date which is 15 Business Days after the date of this Agreement, then “SS” will be (A) the number of Sale Shares multiplied by (B) the proportion that the number of Shares that SPV sells under that Premium Sale reflects of the total number of Shares that SPV holds on the date which is 15 Business Days after the date of this Agreement.

## 5. Matching top-up

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- (a) If, within 20 Business Days after the date of this Agreement, SPV acquires from any Third Party any Shares On-Market at a price per Share (net of any brokerage fees or any other transaction fees) which is more than 5 cents above the Sale Price (a **Matching Amount Acquisition**), then SPV will pay (or procure the payment of) the Matching Amount to the Shareholder within five Business Days after the date on which SPV acquires those Shares.

- (b) Subject to clauses 5(c) and 5(d), the **Matching Amount** is the amount calculated in accordance with the following formula:

$$N \times (OMP - TP)$$

where:

**N** is the number of the Sale Shares divided by two;

**OMP** is the price per Share paid by SPV (net of any brokerage fees or any other transaction fees) under the relevant Matching Amount Acquisition; and

**TP** is (A) Sale Price plus 5 cents, plus (B) the aggregate of any prior paid Matching Amounts paid under clause 5(a) divided by half the number of Sale Shares.

- (c) If the amount calculated in accordance with the formula set out in clause 5(b) is a negative number, then the Matching Amount will be zero and no amount will be payable under clause 5(a) in respect of that Matching Amount Acquisition.
- (d) If the Shares are subdivided or consolidated (or there is any other similar proportionate capital reconstruction) during the period commencing on the date of this Agreement and ending on the date of completion of the relevant Matching Amount Acquisition, then the Matching Amount will be adjusted as appropriate to take account of that subdivision or consolidation (or other similar proportionate capital reconstruction) of the Shares in order to give effect to the intention of this clause 5.

## 6. Acknowledgements

---

The parties acknowledge that:

- (a) there is no agreement, arrangement or understanding between them (legal, moral or otherwise) relating to any of the Other Shares;

- (b) other than this Agreement, there is no on-going agreement, arrangement or understanding between them (legal, moral or otherwise), whether relating to the Company or otherwise;
- (c) the Shareholder may exercise and/or control the exercise of all voting rights (as defined in the Takeovers Code) attached to the Other Shares in whatever manner it sees fit;
- (d) nothing in this Agreement will confer on SPV (or any other party) the ability, or right, to hold or control (as defined in the Takeovers Code) any voting rights attaching to any of the Other Shares, and SPV has no control whatsoever over any of those voting rights;
- (e) the Shareholder is free to sell or dispose of any of the Other Shares in whatever manner, and at whatever time, it sees fit (subject to applicable insider trading law); and
- (f) SPV and the Shareholder are not acting jointly or in concert.

## **7. Termination**

---

The obligations of SPV under this Agreement will automatically terminate, and the terms of this Agreement will be of no force or effect, upon SPV paying a Top Up Amount to the Shareholder under clause 3.1.

## **8. General**

---

### **8.1 Variation**

This Agreement may only be varied in writing signed by the parties.

### **8.2 No assignment**

No party will, directly or indirectly, assign, transfer or otherwise dispose of any rights or interests of that party in, or obligations or liabilities under, this Agreement without the written consent of the other.

### **8.3 Costs**

The parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this Agreement and any documentation pertaining hereto.

### **8.4 Entire agreement**

This Agreement, and the contract note dated on or about the date of this Agreement relating to the Sale, constitute the entire agreement and understanding (express and implied) between the parties relating to the Sale and supersedes and cancels all previous agreements and understandings between the parties relating thereto, whether written or oral.

### **8.5 Counterparts**

This Agreement may be signed in two or more counterparts (including scanned copies), all of which when taken together shall constitute one and the same instrument and a binding and enforceable agreement between the parties.

## **8.6 Governing law**

This Agreement shall be governed by, and construed in accordance with, New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## Execution

**Executed** as an agreement.

**SIGNED** on behalf of **5382917 Limited** by:



---

Director / Authorised signatory

Sir Ralph Norris

---

Print name

**SIGNED** on behalf of **ANZ New Zealand Investments Limited** by:

---

Director / Authorised signatory

---

Print name

**SIGNED** on behalf of **ANZ Bank New Zealand Limited** by:

---

Director / Authorised signatory

---

Print name

## Execution

**Executed** as an agreement.

**SIGNED** on behalf of **5382917 Limited** by:

\_\_\_\_\_  
Director / Authorised signatory

\_\_\_\_\_  
Print name

**SIGNED** on behalf of **ANZ New Zealand Investments Limited** by:



\_\_\_\_\_  
Director / Authorised signatory

George Crosby, Chief Investment Officer  
Print name

**SIGNED** on behalf of **ANZ Bank New Zealand Limited** by:



\_\_\_\_\_  
Director / Authorised signatory

George Crosby, Chief Investment Officer  
Print name

**Schedule**

|                                                                                                                                           |                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <b>Name of shareholder:</b>                                                                                                               | ANZ New Zealand Investments Limited and ANZ Bank New Zealand Limited (together, the <b>Shareholder</b> ) |
| <b>Number of Shares:</b>                                                                                                                  | 8,843,922                                                                                                |
| <b>Sale Price</b> (before any brokerage fees or any other transaction fees paid by SPV in respect of the acquisition of the Sale Shares): | NZ\$2.30                                                                                                 |

# **Escalator Agreement**

**relating to**

shares in Tourism Holdings Limited

**The shareholder named in the Schedule to this Agreement**

Shareholder

**and**

**5382917 Limited**

SPV

**Date** 14 June 2025

This **Agreement** is made on 14 June 2025

**between** (1) **The shareholder named in the Schedule to this Agreement (Shareholder)**

**and** (2) **5382917 Limited (SPV)**

## **Introduction**

- A. The Shareholder has agreed to sell, and SPV has agreed to purchase, the Sale Shares through an on-market transfer on NZX between the parties on 16 June 2025 (the **Sale**).
- B. As part of the consideration for the Sale, SPV has agreed to pay a Top Up Amount to the Shareholder in certain circumstances.
- C. This Agreement sets out the terms and conditions on which SPV has agreed to pay the Top Up Amount to the Shareholder.

## **It is agreed**

### **1. Definitions and interpretation**

---

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Associate** has the meaning given to it in the Takeovers Code;

**Bidder** means:

- (a) in the case of a Scheme, the promoter of the Scheme; or
- (b) in the case of a Takeover Offer, the offeror of the Takeover Offer,

in each case being either SPV or a Related Company or Associate of SPV;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand;

**Companies Act** means the Companies Act 1993;

**Company** means Tourism Holdings Limited;

**Consideration** means, in relation to each Sale Share, the aggregate of:

- (a) the Sale Price; and
- (b) any Top Up Amounts divided by the number of the Sale Shares;

**Other Shares** means all of the Shares from time to time held or controlled by the Shareholder other than the Sale Shares, including any Shares acquired by the Shareholder after the date of this Agreement;

**Premium Sale** has the meaning given to it in clause 3.2(b);

**Premium Sale Price** means the price per Share, in cash in New Zealand dollars, received by SPV (net of any brokerage fees or any other transaction fees (on a per Share basis)) under a Premium Sale;

**Qualifying Sale** has the meaning given to it in clause 3.2(a);

**Related Company** has the meaning given to it in section 2(3) of the Companies Act provided that for the purposes of this Agreement a reference to “company” in that section refers to any body corporate notwithstanding its jurisdiction of incorporation;

**Relevant Transaction Price** means the SPV Control Transaction Price or the relevant Premium Sale Price (as applicable);

**Sale** has the meaning given to it in paragraph A of the Introduction;

**Sale Price** means the price per Share set out in the second column of the third row of the Schedule to this Agreement, plus any brokerage fees or any other transaction fees (on a per Sale Share basis) paid by SPV in respect of the acquisition of the Sale Shares;

**Sale Shares** means the number of Shares set out in the second column of the second row of the Schedule to this Agreement;

**Scheme** has the meaning given to it in clause 3.1(a)(i);

**Share** means an ordinary share in the Company;

**SIA** has the meaning given to it in clause 3.1(a)(i);

**SPV Control Transaction Price** means the price per Share, in cash in New Zealand dollars, payable by the Bidder under the Scheme or the Takeover Offer, as the case may be;

**Takeover Offer** has the meaning given to it in clause 3.1(b)(i);

**Takeovers Code** means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR2000/210), as amended by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

**Third Party** means a person other than SPV or any of SPV’s Related Companies, shareholders, affiliates or Associates; and

**Top Up Amount** has the meaning given to it in clause 4.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) references to dates and times are to dates and times in New Zealand;
- (b) references to currency are to New Zealand currency;

- (c) headings are for convenience only and do not affect interpretation;
- (d) a reference to a statute or other law is a reference to a New Zealand statute or other law and includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to any document or agreement (including this Agreement) is to that document or agreement as amended, varied, supplemented, novated or replaced from time to time;
- (f) no term of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or a provision of it; and
- (g) a reference to “including” means “including but not limited to” and “include” and “includes” have corresponding meanings.

## **2. Commitment to execute Sale**

---

### **2.1 Irrevocable undertaking**

The Shareholder irrevocably undertakes to sell, and SPV irrevocably undertakes to purchase, the Sale Shares through an on-market transfer on NZX between the parties on 16 June 2025.

### **2.2 Further actions**

Each party agrees to take any steps necessary to give effect to its undertaking under clause 2.1.

## **3. Payment of Top Up Amount**

---

### **3.1 SPV control transaction**

(a) If within 12 months of the date of this Agreement:

- (i) SPV or one of its Related Companies or Associates enters into a scheme implementation agreement (**SIA**) with the Company to implement a scheme of arrangement under Part 15 of the Companies Act in relation to the acquisition by that party (or its nominee) of all of the Shares (**Scheme**);
- (ii) the SPV Control Transaction Price for the Scheme is greater than the Sale Price; and
- (iii) the Scheme is implemented in accordance with the SIA,

then SPV will pay (or procure the payment of) the Top Up Amount to the Shareholder within five Business Days after the date on which the Scheme is implemented in accordance with its terms.

(b) If within 12 months of the date of this Agreement:

- (i) SPV or one of its Related Companies or Associates gives a notice under rule 41 of the Takeovers Code of its intention to make a takeover offer for all or part of the equity securities in the Company (**Takeover Offer**);

- (ii) the SPV Control Transaction Price for the Takeover Offer is greater than the Sale Price; and
- (iii) the Takeover Offer is declared unconditional in all respects in accordance with rule 49C(3) of the Takeovers Code,

then SPV will pay (or procure the payment of) the Top Up Amount to the Shareholder within five Business Days after the date on which the Takeover Offer is declared unconditional in all respects.

### 3.2 Premium Sale

If within 12 months of the date of this Agreement:

- (a) SPV sells any Shares to a Third Party under a competing scheme of arrangement under Part 15 of the Companies Act, a competing takeover offer under the Takeovers Code, the compulsory acquisition process under the Takeovers Code, an on-market sale or an off-market sale (a **Qualifying Sale**); and
- (b) the Premium Sale Price under the Qualifying Sale is greater than the Sale Price (a **Premium Sale**),

then SPV will pay (or procure the payment of) the Top Up Amount to the Shareholder within five Business Days after the date SPV receives the consideration for that Premium Sale.

### 3.3 General

- (a) Any Top Up Amount payable to the Shareholder by SPV (or by the Bidder or any other party following procurement by SPV) is agreed by the parties to be additional consideration paid by SPV for the Sale Shares.
- (b) Notwithstanding any other provision of this Agreement:
  - (i) if a Top Up Amount is paid by SPV under clause 3.2 and a Top Up Amount subsequently becomes payable by SPV under clause 3.1, then the Top Up Amount payable by SPV under clause 3.1 will be reduced by an amount equal to the aggregate of any such Top Up Amounts the Shareholder has been paid by SPV under clause 3.2; and
  - (ii) except to the extent that clause 4(c) applies, a Top Up Amount is not payable in any circumstances where it would result in a Top Up Amount being payable in respect of more than the number of the Sale Shares (including where the aggregate proportion for Premium Sales where clause 4(d) applies has reached 100%).
- (c) If within 12 months of the date of this Agreement SPV transfers the Sale Shares to one or more of its Related Companies, shareholders, affiliates or Associates, then references in clauses 3.2 and 4 to SPV are to be read as a reference to such transferee or transferees in order to give effect to the intention of this Agreement.
- (d) For the purposes of the financial arrangements rules in the Income Tax Act 2007, if a Top Up Amount is payable under this Agreement, the parties agree that:
  - (i) the Consideration is the lowest price (within the meaning of section EW 32 of the Income Tax Act 2007) that would have been agreed for the transfer of each Sale Share, on the date this Agreement was entered into, if payment had been required in full at the time the first right in each of the Sale Shares was transferred;

- (ii) the Consideration is the value of each Sale Share; and
- (iii) they will compute their taxable income for the relevant period on the basis that the Consideration for each Sale Share includes no capitalised interest, and will file their tax returns accordingly.

#### 4. Calculating the Top Up Amount

---

- (a) Subject to clauses 4(b), 4(c) and 4(d), the **Top Up Amount** is the amount calculated in accordance with the following formula:

$$SS \times (RTP - SP)$$

where:

**SS** is:

- (i) where clause 3.1 applies, the number of Sale Shares;
- (ii) where clause 3.2 applies, the number of Sale Shares held by SPV that are sold under that Premium Sale;

**RTP** is the Relevant Transaction Price; and

**SP** is the Sale Price.

- (b) The parties agree that if the amount calculated under clause 4(a) is a negative amount, then the Top Up Amount will be zero and no amount will be payable to the Shareholder under clause 3.
- (c) If the Shares are subdivided or consolidated (or there is any other similar proportionate capital reconstruction) during the period commencing on the date of this Agreement and ending on:
- (i) in relation to a Scheme, the date on which the Scheme is implemented in accordance with the SIA; or
  - (ii) in relation to a Takeover Offer, the date on which the Takeover Offer is declared unconditional in all respects in accordance with rule 49C(3) of the Takeovers Code; or
  - (iii) in relation to a Premium Sale, the date of completion of that sale,

then the Top Up Amount will be adjusted as appropriate to take account of that subdivision or consolidation (or other similar proportionate capital reconstruction) of the Shares in order to give effect to the intention of this clause 4.

- (d) For the purposes of limb (ii) of the definition of "SS", if the number of Shares that SPV sells under that Premium Sale is less than the total number of Shares that SPV holds on the date which is 15 Business Days after the date of this Agreement, then "SS" will be (A) the number of Sale Shares multiplied by (B) the proportion that the number of Shares that SPV sells under that Premium Sale reflects of the total number of Shares that SPV holds on the date which is 15 Business Days after the date of this Agreement.

## **5. Acknowledgements**

---

The parties acknowledge that:

- (a) there is no agreement, arrangement or understanding between them (legal, moral or otherwise) relating to any of the Other Shares;
- (b) other than this Agreement, there is no on-going agreement, arrangement or understanding between them (legal, moral or otherwise), whether relating to the Company or otherwise;
- (c) the Shareholder may exercise and/or control the exercise of all voting rights (as defined in the Takeovers Code) attached to the Other Shares in whatever manner it sees fit;
- (d) nothing in this Agreement will confer on SPV (or any other party) the ability, or right, to hold or control (as defined in the Takeovers Code) any voting rights attaching to any of the Other Shares, and SPV has no control whatsoever over any of those voting rights;
- (e) the Shareholder is free to sell or dispose of any of the Other Shares in whatever manner, and at whatever time, it sees fit (subject to applicable insider trading law); and
- (f) SPV and the Shareholder are not acting jointly or in concert.

## **6. Termination**

---

The obligations of SPV under this Agreement will automatically terminate, and the terms of this Agreement will be of no force or effect, upon SPV paying a Top Up Amount to the Shareholder under clause 3.1.

## **7. General**

---

### **7.1 Variation**

This Agreement may only be varied in writing signed by the parties.

### **7.2 No assignment**

No party will, directly or indirectly, assign, transfer or otherwise dispose of any rights or interests of that party in, or obligations or liabilities under, this Agreement without the written consent of the other.

### **7.3 Costs**

The parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of this Agreement and any documentation pertaining hereto.

### **7.4 Entire agreement**

This Agreement, and the contract note dated on or about the date of this Agreement relating to the Sale, constitute the entire agreement and understanding (express and implied)

between the parties relating to the Sale and supersedes and cancels all previous agreements and understandings between the parties relating thereto, whether written or oral.

#### **7.5 Counterparts**

This Agreement may be signed in two or more counterparts (including scanned copies), all of which when taken together shall constitute one and the same instrument and a binding and enforceable agreement between the parties.

#### **7.6 Governing law**

This Agreement shall be governed by, and construed in accordance with, New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## Execution

**Executed** as an agreement.

**SIGNED** on behalf of **5382917**  
**Limited** by:



---

Director / Authorised signatory

Sir Ralph Norris

---

Print name

**SIGNED** on behalf of **the**  
**shareholder named in the**  
**Schedule to this Agreement** by:

---

Director / Authorised signatory

---

Print name

## Execution

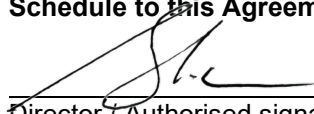
**Executed** as an agreement.

**SIGNED** on behalf of **5382917**  
**Limited** by:

\_\_\_\_\_  
Director / Authorised signatory

\_\_\_\_\_  
Print name

**SIGNED** on behalf of the  
**shareholder named in the**  
**Schedule to this Agreement** by:



\_\_\_\_\_  
Director / Authorised signatory

**Blair Cooper - Head of Equities**  
\_\_\_\_\_  
Print name

**Schedule**

|                                                                                                                                           |                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| <b>Name of shareholder:</b>                                                                                                               | Accident Compensation Corporation |
| <b>Number of Shares:</b>                                                                                                                  | 4,421,961                         |
| <b>Sale Price</b> (before any brokerage fees or any other transaction fees paid by SPV in respect of the acquisition of the Sale Shares): | NZ\$2.25                          |