

## Disclosure of beginning to have substantial holding

Section 276, Financial Markets Conduct Act 2013

**To:** NZX Limited

and

**To:** Metlifecare Limited

Date this disclosure made: 7 April 2017

Date on which substantial holding began: 6 April 2017

### Substantial product holder(s) giving disclosure:

Full name(s): Forsyth Barr Group Limited

### Summary of substantial holding

Class of quoted voting products: Ordinary shares (MET.NZ)

Summary for: Forsyth Barr Group Limited

For this disclosure,—

(a) total number held in class: 43,641,662

(b) total in class: 213,005,909

(c) total percentage held in class: 20.49%

### Details of relevant interests

Details for Forsyth Barr Group Limited

Nature of relevant interest(s): On 6 April 2017, Infratil RV Limited (a wholly-owned subsidiary of Infratil Limited) entered into a block trade agreement with Forsyth Barr Group Limited (attached, 12 pages) involving the off-market sale of 42,411,973 ordinary shares in Metlifecare Limited. The sale will take place on 7 April 2017, with a sale price of NZ\$5.61 per share for aggregate consideration of NZ\$237,931,169, with settlement to occur on 11 April 2017.

For that relevant interest,—

(a) number held in class: 42,411,973

(b) percentage held in class: 19.92%

(c) current registered holder(s): Infratil RV Limited

(d) registered holder(s) once transfers are registered: Forsyth Barr Limited and various clients of Forsyth Barr or their nominees.

For a derivative relevant interest, also—

(a) type of derivative: Not applicable

(b) details of derivative: Not applicable

(c) parties to the derivative: Not applicable

(d) if the substantial product holder is not a party to the derivative, the nature of the relevant interest in the derivative: Not applicable

Nature of relevant interest(s):	This relevant interest arises under various investment management agreements to which Forsyth Barr Investment Management Limited is a party in its capacity as the manager of the Forsyth Barr Investment Funds and as a provider of discretionary investment management services. The relevant interest arises only from the powers of investment contained in those agreements, including the power to control the exercise of the right to vote attached to the shares and to control the disposal of the shares. A relevant agreement document need not be attached under regulation 139. Forsyth Barr Investment Management Limited is a subsidiary of Forsyth Barr Group Limited.
For that relevant interest,—	
(a) number held in class:	1,218,689
(b) percentage held in class:	0.57%
(c) current registered holder(s):	Forsyth Barr Custodians Limited
(d) registered holder(s) once transfers are registered:	Not applicable
For a derivative relevant interest, also—	
(a) type of derivative:	Not applicable
(b) details of derivative:	Not applicable
(c) parties to the derivative:	Not applicable
(d) if the substantial product holder is not a party to the derivative, the nature of the relevant interest in the derivative:	Not applicable

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

Details of the transactions or other events requiring disclosure:	Entry into block trade agreement referred to above.
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**Additional information**

Address(es) of substantial product holder(s):	Forsyth Barr House, The Octagon, Dunedin
Contact details:	Nick Hegan T: +64 4 495 8202 E: <a href="mailto:compliance@forsythbarr.co.nz">compliance@forsythbarr.co.nz</a>
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:	Infratil RV Limited

**Certification**

I, Nicholas Hegan, 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.

COMMERCIAL-IN CONFIDENCE

6 April 2017

Infratil RV Limited  
5 Market Lane  
Wellington 6140  
New Zealand

Dear Sirs

**Sale of Shares in Metlifecare Limited (ASX:MEQ; NZX:MET)**

**1. INTRODUCTION**

This Agreement sets out the terms and conditions upon which the Infratil RV Limited (**Vendor**) agrees to sell, and Forsyth Barr Group Limited (**Purchaser**) agrees to buy, 42,411,973 existing fully-paid ordinary shares (**Sale Shares**) in Metlifecare Limited (ASX:MEQ; NZX:MET) (**Company**) held by the Vendor (**Sale**).

**2. SALE OF SHARES**

**2.1 Sale**

Subject to the terms of this Agreement, the Purchaser shall purchase from the Vendor, and the Vendor shall sell, the Sale Shares at a price equal to NZ\$ 5.61 (**Sale Price**) per Sale Share on 7 April 2017 (**Trade Date**).

**2.2 Sale and Settlement Date**

The sale of the Sale Shares to the Purchaser under clause 2.1 shall be effected on the Trade Date in accordance with the NZX and ASX Settlement Rules, with settlement to follow on a T+2 basis (**Settlement Date**).

**2.3 Sale Shares**

- (a) Subject to clause 10, by 2.00pm on the Settlement Date, the Purchaser shall arrange for the payment to the Vendor, or as the Vendor directs, of an amount equal to:
- (i) the Sale Price multiplied by the number of Sale Shares (**Aggregate Price**);
- less
- (ii) any fees payable under clause 4 (together with any GST imposed on the Purchaser in respect of those fees),

by transfer to the Vendor's account for value (in cleared funds) against delivery of the Sale Shares being sold by the Vendor.

- (b) If, for any reason other than the non-performance or breach by the Vendor of its obligations, undertakings or warranties under this Agreement, the Purchaser has not paid any portion of the Aggregate Price less any fees payable to it under clause 4 (and any GST in respect of such fees) on the Settlement Date, then interest will accrue at a bid rate equal to BKBM plus 150 basis points on any such unpaid amount on and from the Settlement Date until the unpaid amount is paid in full (plus accrued interest).

In this clause, the "**BKBM**" means the reference rate administered by the New Zealand Financial Markets Association (or any other person which takes over the administration of that rate) displayed at or about 10.45am (Auckland time) on the Settlement Date on the Thomson Reuters screen BKBM page (or any replacement Thomson Reuters page which displays that rate) having a term equal to one month.

## **2.4 Account Opening**

On or before the Trade Date the Purchaser or its nominated Affiliate will (where relevant) open a dealer account in the name of the Vendor in accordance with its usual practice.

## **3. OFFER AND ACCEPTANCE**

### **3.1 Offer**

By the Vendor executing this Agreement and providing a copy of the Agreement, for execution, to the Purchaser the Vendor offers to enter into this Agreement in accordance with the terms and conditions set out in this Agreement.

### **3.2 Acceptance of Offer**

- (a) By the Purchaser executing this Agreement or a counterpart of this Agreement and complying with clause 3.2(b) the Purchaser accepts the offer set out in clause 3.1.
- (b) This offer can only be accepted by the Purchaser:
- (i) sending to the email address for the Vendor, or as otherwise notified by the Vendor, a scanned image of the Purchaser's completed signature block as an attachment to an email which states that provision of that attachment constitutes acceptance of the terms of this Agreement; and
  - (ii) immediately forwarding a copy of that email (including its attachment) to the Vendor's solicitors.

## **4. FEES AND COSTS**

- (a) In consideration of performing its obligations under this Agreement, the Purchaser shall be entitled to such fees as the parties agree.
- (b) The parties will each bear their own legal costs (if any) and all their other out-of-pocket expenses (if any) in connection with this Agreement and the transactions contemplated by it.

## 5. GST

### 5.1 Input Tax Credit

Any fees which the parties agree to be payable to the Purchaser and any other amounts payable to the Purchaser under this Agreement are, unless otherwise specified, to be agreed and calculated to be exclusive of GST. However, if any amounts payable to the Purchaser under this Agreement are calculated by reference to a cost or expense incurred by the Purchaser, the amount payable to the Purchaser under any other provision of this Agreement must be reduced by the amount of any input tax credit to which the Purchaser reasonably determines it (or the representative member of the same GST group of which the Purchaser is a member) is entitled for an acquisition in connection with that cost or expense.

### 5.2 Tax invoice

If any supply made under this Agreement is a taxable supply, the entity making the taxable supply (**Supplier**) must issue a valid tax invoice to the party providing the consideration for that taxable supply (**Recipient**). The tax invoice issued by the Supplier must comply with GST law and it should set out in detail (but not be limited to) the nature of the taxable supply, the consideration attributable to the taxable supply, the amount of GST payable by the Supplier in connection with the taxable supply and any other details reasonably requested by the Recipient. The GST amount means, in relation to a taxable supply, the amount of GST for which the Supplier is liable in respect of the taxable supply (**GST Amount**).

### 5.3 Timing of Payment

Subject to receipt of a valid tax invoice, the Recipient must pay the GST Amount in connection with a taxable supply made by the Supplier to the Recipient at the same time that the Recipient must provide the consideration for that taxable supply (under the other provisions of this Agreement), or if later, within 5 business days of the Recipient receiving a tax invoice for that taxable supply.

### 5.4 Payment Differences

If the GST payable by the Supplier in connection with the taxable supply differs from the GST Amount paid by the Recipient under this clause, the Supplier must repay any excess to the Recipient or the Recipient must pay any deficiency to the Supplier, as appropriate within 5 business days of the Supplier providing the Recipient with a written notification regarding the difference in the GST payable. Where the difference in the GST payable results from an adjustment event, the written document provided by the Supplier under this clause must include an adjustment note or tax invoice (or debit or credit note) as required by the GST law.

### 5.5 Defined Terms

The references to "**GST**" and other terms used in this Agreement (except Recipient and GST Amount) have the meaning given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) or the Goods and Services Tax Act 1985 (NZ) (as amended from time to time), as applicable. However, any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 5.

## 5.6 References

A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

## 5.7 New Zealand reverse charge

Nothing in clauses 5.2 to 5.4 shall apply in respect of any taxable supply to which section 5B of the Goods and Services Tax Act 1985 (NZ) applies.

## 6. REPRESENTATIONS AND WARRANTIES

### 6.1 Representations and warranties by Vendor

As at the date of this Agreement and on each day until and including the Settlement Date, the Vendor represents and warrants to the Purchaser that each of the following statements is true, accurate and not misleading:

- (a) **(body corporate)** it is a body corporate validly existing and duly established under the laws of its place of incorporation;
- (b) **(capacity)** it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) **(authority)** it has taken, or will have taken by the time required, all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates;
- (d) **(agreement effective)** this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;
- (e) **(ownership, encumbrances)** it is the registered holder and sole legal owner of the Sale Shares and will transfer the full legal and beneficial ownership of those Sale Shares free and clear of all liens, charges, security interests, claims, equities and pre-emptive rights, subject to registration of the transferee(s) in the register of shareholders of the Company;
- (f) **(Sale Shares)** following sale by it, the Sale Shares will rank equally in all respects with all other outstanding ordinary shares of the Company, including their entitlement to dividends;
- (g) **(control)** the Sale Shares may be offered for sale and may be on-sold without disclosure to investors under Part 6D.2 of the Corporations Act 2001 (Aust) (**Corporations Act**) and/or Part 3 of the Financial Markets Conduct Act 2013 (NZ) (**FMCA**) and neither the Vendor nor any person who controls, or is controlled by, the Vendor is a controller of the Company within the meaning of sections 50AA and 707(2) of the Corporations Act or clause 48 of Schedule 1 of the FMCA;
- (h) **(power to sell)** it has the corporate authority and power to sell the Sale Shares under this Agreement and no person has a conflicting right, whether contingent or otherwise, to purchase or to be offered for purchase the Sale Shares;
- (i) **(no insider trading offence)** the Vendor does not have any non-public information concerning the Company that a reasonable person would expect to have a material effect on

the price or value of the Shares (other than the information that it proposes to enter into the Sale pursuant to this Agreement), and the sale of the Sale Shares hereunder will not constitute a violation by the Vendor of applicable law prohibiting "insider dealing" in financial products, including, but not limited to, Division 3 of Part 7.10 of the Corporations Act and Subpart 2 of Part 5 of the FMCA;

- (j) **(trustee)** where it is a trustee of a trust, it has been validly appointed as trustee of that trust, there is no current proposal to replace it as trustee of that trust and it has the right to be indemnified out of the assets of that trust;
- (k) **(breach of law)** it will perform its obligations under this Agreement so as to comply with all applicable laws in New Zealand and Australia, including in particular the FMCA and the Corporations Act;
- (l) **(OFAC)** neither the Vendor nor any director, officer, agent, employee, affiliate or person acting on behalf of the Vendor is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the United States Treasury Department ("**OFAC**") (including the designation as a "specially designated national" or "blocked person" thereunder) or is currently subject to any similar sanctions administered by Her Majesty's Treasury in the United Kingdom or the European Union; and the Vendor will not directly or indirectly use the proceeds of the placing of the Sale Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, (i) to finance the activities of any person currently subject to any United States sanctions administered by OFAC (including the designation as a "specially designated national" or "blocked person" thereunder) or currently subject to any similar sanctions administered by Her Majesty's Treasury in the United Kingdom or the European Union or (ii) in any other manner that will result in a violation of the sanctions by any person (including any person or entity participating, in the placing of the Sale Shares, whether as underwriter, placing agent, advisor, investor or otherwise);
- (m) **(no directed selling efforts)** with respect to those Sale Shares sold in reliance on Regulation S, none of it, any of its Affiliates, or any person acting on behalf of any of them (other than the Purchaser or its Affiliates or any person acting on behalf of any of them, as to whom it makes no representation) has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the U.S. Securities Act);
- (n) **(Rule 405)** to the best of its knowledge, the Company is a 'foreign private issuer' as defined in Rule 405 under the U.S. Securities Act and there is no 'substantial U.S. market interest' (as defined in Rule 902(j) under the U.S. Securities Act in the Sale Shares or any security of the same class or series as the Sale Shares; and
- (o) **(no stabilisation or manipulation)** neither it nor any of its Affiliates has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilisation or manipulation of the price of the Sale Shares in violation of any applicable law.



## 6.2 Representations and warranties of the Purchaser

As at the date of this Agreement, on each day until and including the Settlement Date, the Purchaser represents to the Vendor that each of the following statements is correct:

- (a) **(body corporate)** it is a body corporate validly existing and duly established and duly incorporated under the laws of its place of incorporation;
- (b) **(capacity)** it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) **(authority)** it has taken, or will have taken by the time required, all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates;
- (d) **(licences)** it holds all licences, permits and authorities necessary for it to fulfil its obligations under this Agreement and has complied with the terms and conditions of the same in all material respects;
- (e) **(Agreement effective)** this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;
- (f) **(US offer restrictions)** it acknowledges and agrees that the offer and sale of the Sale Shares have not been, and will not be, registered under the U.S. Securities Act and that the Sale shares may only be offered or sold in "offshore transactions" in accordance with Regulation S, including to Eligible US Fund Managers;
- (g) **(no directed selling efforts)** with respect to those Sale Shares sold in reliance on Regulation S, none of it, its Affiliates nor any person acting on behalf of any of them has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the U.S. Securities Act); and
- (h) **(no stabilisation or manipulation)** neither it nor any of its Affiliates has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilisation or manipulation of the price of the Sale Shares in violation of any applicable law.

## 6.3 Reliance

Each party giving a representation and warranty acknowledges that the other parties have relied on the above representations and warranties in entering into this Agreement and will continue to rely on these representations and warranties in performing their obligations under this Agreement. The above representations and warranties continue in full force and effect notwithstanding completion of this Agreement.

## 6.4 Notification

Each party agrees that it will tell the other parties immediately upon becoming aware of any of the following occurring prior to the completion of the sale of the Sale Shares:

- (a) any material change affecting any of the foregoing representations and warranties; or

- (b) any of the foregoing representations or warranties becoming materially untrue or materially incorrect.

## 7. UNDERTAKINGS

### 7.1 Restricted Activities

The Vendor undertakes to the Purchaser to:

- (a) not, prior to settlement on the Settlement Date commit, be involved in or acquiesce in any activity which breaches:
  - (i) the FMCA, Corporations Act and any other applicable laws in New Zealand, Australia or the United States;
  - (ii) its constitution;
  - (iii) the ASX Listing Rules;
  - (iv) the NZX listing rules;
  - (v) any legally binding requirement of the Financial Markets Authority or the NZX; or
  - (vi) any legally binding requirement of ASIC or the ASX; and
- (b) immediately notify the Purchaser of any breach of any warranty or undertaking given by it under this Agreement,

each of these undertakings being material terms of this Agreement.

## 8. INDEMNITY

- 8.1 The Vendor agrees to indemnify and hold harmless the Purchaser against any losses, claims, damages, demands or liabilities (or actions in respect thereof) to which the Purchaser may become subject in so far as such losses, claims, damages, demands or liabilities (or actions in respect thereof) relate to or arise out of any breach or alleged breach of the terms of this Agreement or as a result of any of the representations and warranties of the Vendor being, or being alleged to be, untrue or misleading in any respect or otherwise relate to or arise in relation to the Sale. This indemnity shall not, however, apply to the extent that it is finally judicially determined that such losses, claims, damages, demands or liabilities resulted from the Purchaser's gross negligence, fraud or wilful misconduct or to the extent that the amounts claimed represent any criminal penalty or fine which the indemnified person is required to pay for any contravention of any law. The Vendor agrees to reimburse the Purchaser promptly for any duly itemised expenses (including reasonable counsel's fees) reasonably incurred by the Purchaser in connection with investigating or defending any such action or claim. The indemnification obligations of the Vendor are in addition to any liability the Vendor may otherwise have and shall extend, upon the same terms and conditions, to the Purchaser's affiliates and the directors, partners, officers, employees, representatives and controlling persons of the Purchaser and its affiliates (collectively, "**Purchaser Affiliates**").
- 8.2 The Vendor further agrees that no claim shall be made by it hereunder against the Purchaser to recover any loss, claim, damage, demand or liability that the Vendor may suffer or incur by reason

of or arising out of the carrying out or the performance by any indemnified party of their obligations or services under this Agreement. This release shall not, however, apply to the extent that it is finally judicially determined that such loss, claim, damage, demand or liability resulted from the gross negligence, fraud or wilful misconduct of the indemnified party claiming the benefit of this release.

- 8.3 The Indemnification and release obligations of the Vendor shall survive termination or completion of this Agreement.

## **9. PUBLICITY**

9.1 The Vendor and the Purchaser will consult each other in respect of any material public releases by any of them concerning the sale of the Sale Shares. The prior written consent of the Vendor must be obtained prior to the Purchaser making any release or announcement or engaging in publicity in relation to the Sale of the Sale Shares and such release, announcement or engagement must be in compliance with all applicable laws, including the securities laws of New Zealand, Australia, the United States and any other jurisdiction.

9.2 The Purchaser may, after completion of its other obligations under this Agreement, place advertisements in financial and other newspapers and journals at its own expense describing their service to the Vendor provided such advertisements are in compliance with all applicable laws, including the securities laws of New Zealand, Australia, the United States and any other jurisdiction and are consistent with other publicly available information in relation to the subject matter of the announcement.

## **10. EVENT OF TERMINATION**

### **10.1 Right of termination**

If, at any time during the Risk Period (as defined in clause 10.4):

- (a) the Vendor is in default of any of the terms and conditions of this Agreement or breaches any representation, warranty or undertaking given or made by it under this Agreement; or
- (b) there develops, occurs or comes into force any of the following:
  - (i) any new law or regulation or any change in existing laws or regulations which in the opinion of the Purchaser makes it impracticable or inadvisable or inexpedient to proceed with the transaction or has or is likely to have a material adverse effect on the financial position, business, results of operation or prospects of the Company; or
  - (ii) any significant event, development or change (whether or not permanent or forming part of a series of event, developments or changes occurring or continuing before, on and/or after the date hereof) in local, national or international economic, financial, fiscal, industrial, regulatory, political or military conditions, securities market conditions or currency exchange rates or exchange controls, including without limitation, any outbreak or escalation of hostilities, declaration by New Zealand, the United States, the United Kingdom or Australia of a national emergency or other calamity or crisis, the effect of which in the opinion of the Purchaser is or would be materially adverse to the

- success of the transaction, or makes it impracticable or inadvisable or inexpedient to proceed therewith; or
- (iii) the declaration of a banking moratorium by New Zealand, United States, the United Kingdom or Australian authorities, or any moratorium, suspension or material restriction on trading in shares or securities generally; or
- (iv) any suspension of dealings in the Shares for any period whatsoever; or
- (c) the commencement by any regulatory or political body or organisation of any action against the Vendor or the Company or any director of the Company or the Vendor, or an announcement by any regulatory or political body or organisation that it intends to take any such action,

then the Purchaser may terminate this Agreement without cost or liability to itself at any time before the expiry of the Risk Period by giving written notice to the Vendor.

## 10.2 Materiality

No event listed in clause 10.1(a) entitles the Purchaser to exercise its termination rights unless, in the bona fide opinion of the Purchaser, it:

- (a) has, or would reasonably be expected to have, a material adverse effect on:
  - (i) the willingness of persons to purchase the Sale Shares; or
  - (ii) the price at which ordinary shares in the Company are sold on the NZX or ASX; or
- (b) would reasonably be expected to give rise to a liability of the Purchaser under the FMCA, the Corporations Act or any other applicable law.

## 10.3 Effect of termination

Where, in accordance with this clause 10, the Purchaser terminates its obligations under this Agreement:

- (a) the obligations of the Purchaser under this Agreement immediately end; and
- (b) any entitlements of the Purchaser accrued under this Agreement up to the date of termination, including the right to be indemnified, survive.

## 10.4 Risk Period

For the purposes of this clause, the "**Risk Period**" means the period commencing on the execution of this Agreement and ending at the earlier of:

- (a) 9.45am on the Trade Date; and
- (b) the time of the crossing (or if more than one crossing, the occurrence of the first crossing) of the Sale Shares on the NZX or ASX referred to in clause 2.2.

## 11. MISCELLANEOUS

### 11.1 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 matter.

### 11.2 Governing law

This Agreement is governed by the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New Zealand, and waives any right to claim that those courts are an inconvenient forum.

### 11.3 No assignment

No party may assign its rights or obligations under this Agreement without the prior written consent of the other parties.

### 11.4 Notices

Any notice, approval, consent, agreement, waiver or other communication in connection with this Agreement must be in writing.

### 11.5 Affiliates

In this Agreement the term "**Affiliates**" means any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a person; "**control**" (including the terms "**controlled by**" and "**under common control with**") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities by contract or agency or otherwise and the term "**person**" is deemed to include a partnership.

### 11.6 Business Day

In this Agreement "**Business Day**" means a day on which:

- (a) NZX is open for trading in securities; and
- (b) banks are open for general banking business in Auckland, New Zealand.

### 11.7 Interpretation

In this Agreement:

- (a) headings and sub-headings are for convenience only and do not affect interpretation;
- (b) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (c) a reference to "dollars" and "\$" is to New Zealand currency;
- (d) a reference to a right or obligation of any 2 or more persons confers that right, or imposes that obligation, severally and not jointly and severally; and
- (e) all references to time are to Auckland, New Zealand time.

### **11.8 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

### **11.9 Waiver and variation**

A provision of or right vested under this Agreement may not be:

- (a) waived except in writing signed by the party granting the waiver, or
- (b) varied except in writing signed by the parties.

### **11.10 No merger**

The rights and obligations of the parties will not merge on the termination or expiration of this Agreement. Any provision of this Agreement remaining to be performed or observed by a party, or having effect after the termination of this Agreement for whatever reason remains in full force and effect and is binding on that party.

### **11.11 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one Agreement.

### **11.12 Acknowledgement**

The Vendor acknowledges that:

- (a) the Purchaser is not obliged to disclose to the Vendor or utilise for the benefit of the Vendor, any non-public information which the Purchaser obtains in the normal course of its business where such disclosure or use would result in a breach of any obligation of confidentiality and any internal Chinese wall policies of the Purchaser;
- (b) without prejudice to any claim the Vendor may have against the Purchaser, no proceedings may be taken against any director, officer, employee or agent of the Purchaser in respect of any claim that the Vendor may have against the Purchaser;
- (c) it is contracting with the Purchaser on an arm's length basis to provide the services described in this Agreement and the Purchaser has not and is not assuming any duties or obligations (fiduciary or otherwise) in respect of it other than those expressly set out in this Agreement;
- (d) the Purchaser has not provided any legal, accounting, regulatory or tax advice with respect to the offer and sale and the Vendor has consulted its own respective legal, accounting, regulatory and tax advisors to the extent it deemed appropriate. This Agreement supersedes any prior agreement or understanding (whether written or oral) between the Vendor and the Purchaser with respect to the subject matter of this clause;
- (e) in performing its obligations under this Agreement, the Purchaser will rely on the information provided to it by or on behalf of the Vendor and information in the public domain without having independently verified the same, and the Purchaser does not assume any

responsibility for the accuracy or completeness of such information for which the Vendor will be solely responsible;

- (f) the Purchaser may perform the services contemplated by this Agreement in conjunction with their respective Affiliates, and any Affiliates performing these services are entitled to the benefits of and are subject to the terms of this Agreement; and
- (g) the Purchaser is a full service securities and corporate advisory firm and, along with its respective Affiliates, the Purchaser is engaged in various activities, including writing research, securities trading, investment management, financing and brokerage activities. In the ordinary course of these activities, the Purchaser, its Affiliates, employees and officers may be providing, or may be in the future providing, financial or other services to other parties with conflicting interests to the Vendor and may receive fees for those services and may actively trade the debt and equity securities (or related derivative securities) for the Purchaser's own account and for the account of their customers and may at any time hold long and short positions in such securities.

Yours sincerely,

**Forsyth Barr Group Limited**



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Signature

**Neil Paviour-Smith**

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Name

Accepted and agreed to as of the date of this Agreement:

**SIGNED** on behalf of  
**INFRATIL RV LIMITED** by:



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Signature

**Marko Bogoevski**

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Name