

Disclosure of movement of 1% or more in substantial holding
or change in nature of relevant interest, or both

Sections 277 and 278, Financial Markets Conduct Act 2013

To NZX Limited

and

To AFT Pharmaceuticals Limited (*AFT*)

Relevant event being disclosed: Change in nature of relevant interest

Date of relevant event: 10 June 2020

Date this disclosure made: 10 June 2020

Date last disclosure made: 21 May 2020

Substantial product holder(s) giving disclosure

Full name(s):

- 1 Capital Royalty Partners II – Parallel Fund “B” (Cayman) LP (*LP 1*);
 - 2 Capital Royalty Partners II (Cayman) LP (*LP 2*);
 - 3 Capital Royalty Partners II – Parallel Fund “A” LP (*LP 3*);
 - 4 Capital Royalty Partners II LP (*LP 4*),
(together, the *Tier 1 LPs*);
 - 5 Capital Royalty Partners II Cayman GP LP;
 - 6 Capital Royalty Partners II Parallel Fund “A” GP LP;
 - 7 Capital Royalty Partners II GP LP,
(together, the *Tier 2 LPs*);
 - 8 Capital Royalty Partners II (Cayman) GP LLC;
 - 9 Capital Royalty Partners II Parallel Fund “A” GP LLC;
 - 10 Capital Royalty Partners II GP LLC,
(together, the *LLC GPs*); and
 - 11 Mr Nathan Hukill,
- 1 – 11 above together being the *CRG Persons*.

Summary of substantial holding

Class of quoted voting products: Ordinary shares in AFT (ISIN: NZAFTE0001S4) (*Shares*)

Summary for the CRG Persons:

For **this** disclosure,—

- (a) total number held in class: 16,067,045
- (b) total in class: 100,501,049
- (c) total percentage held in class: 15.987%

For **last** disclosure,—

- (a) total number held in class: 16,067,045
- (b) total in class: 100,501,049
- (c) total percentage held in class: 15.987%

Details of transactions and events giving rise to relevant event

Details of the transactions or other events requiring disclosure: On 10 June 2020, the Tier 1 LPs, Hartley Campbell Atkinson and Colin McKay as trustees of the Atkinson Family Trust (*AF Trust*) and AFT entered into a placement and sell down agreement with Bell Potter Securities Limited and Forsyth Barr Group Limited (together, the *Underwriters*) and Forsyth Barr Limited pursuant to which the Underwriters agreed to act as underwriters in connection with an offer comprising:

- a placement of approximately NZ\$10 million new Shares to be issued by AFT;
- a sale of approximately NZ\$3.5 million existing Shares held by the AF Trust; and
- a sale of 16,067,045 existing Shares held by the Tier 1 LPs (*CRG Sell Down Shares*).

A copy of the Underwriting Agreement (34 pages) is **attached** to this notice.

Under the Underwriting Agreement:

- the Underwriters are contractually required to underwrite the sale of the CRG Sell Down Shares for the Tier 1 LPs; and
- the Tier 1 LPs agree, for a period of six months after the settlement date of the Offer (expected to be 15 June 2020) to not sell or transfer any Shares or otherwise grant any person an option or right to acquire any Shares held by it, except in the circumstances described in the Underwriting Agreement.

Accordingly, there is a qualification on the power of the CRG Persons to dispose of, or control the disposal of, the Shares held by the CRG Persons (*UWA Qualification*). The board of AFT has also waived certain escrow restrictions described in the SPH notice dated 21 May 2020 filed by the CRG Persons, and the CRG Persons' interests in the Shares held by the Tier 1 LPs are no longer qualified by those escrow restrictions.

Details after relevant event

Details for CRG Persons

Nature of relevant interest(s): Each CRG Person has the same relevant interest as each other CRG Person by virtue of section 237 of the Financial Markets Conduct Act 2013.

More specifically:

(a) The Tier 1 LPs are the registered holders and beneficial owners of the following Shares:

Shareholder	Shares held
LP 1	8,033,523
LP 2	949,290
LP 3	4,067,016
LP 4	3,017,216
TOTAL:	16,067,045

(b) Each Tier 2 LP is general partner of one or more of the Tier 1 LPs. Each LLC GP is in turn general partner of one or more of the Tier 2 LPs. Mr Nathan Hukill is the sole member of each of the LLC GPs. These relationships are illustrated in the table below.

Tier 1 LP (AFT shareholder)	Tier 2 LP (general partner of Tier 1 LP)	LLC GP (general partner of Tier 2 LP)	Sole member of LLC GP
LP 1	Capital Royalty Partners II (Cayman) GP LP	Capital Royalty Partners II (Cayman) GP LLC	Mr Nathan Hukill
LP 2			
LP 3	Capital Royalty Partners II Parallel Fund "A" GP LP	Capital Royalty Partners II Parallel Fund "A" GP LLC	
LP 4	Capital Royalty Partners II GP LP	Capital Royalty Partners II GP LLC	

Each of the Tier 2 LPs, LLC GPs and Mr Nathan Hukill has the power to exercise, or to control the exercise of, the rights to vote attached to the Shares held by its corresponding Tier 1 LP.

In addition, the CRG Persons' relevant interests in the Shares held by them are subject to the UWA Qualification.

For those relevant interests,—

- (a) number held in class: 16,067,045
- (b) percentage held in class: 15.987%
- (c) current registered holder(s): The Tier 1 LPs in the proportions set out above.
- (d) registered holder(s) once transfers are registered: N/A

Additional information

Address(es) of substantial product holder(s): 1000 Main Street, Suite 2500, Houston, TX 77002, United States of America

Contact details: Andrei Dorenbaum, Partner, CRG +1 (713) 209-7350, adorenbaum@crglp.com.

Nature of connection between substantial product holders: Each CRG Person has the same relevant interest as each other CRG Person by virtue of section 237 of the Financial Markets Conduct Act 2013.

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: N/A

Disclosure has effect for purposes of directors' and senior managers' disclosure

Nathan Hukill is also a director of AFT. This disclosure also constitutes disclosure for the purposes of the directors' and senior managers' disclosure obligations.

Certification

I, Andrei Dorenbaum, 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.

10 June 2020

The directors

AFT Pharmaceuticals Limited

Level 1, 129 Hurstmere Road
Takapuna
Auckland 0622
New Zealand

Hartley Atkinson and Colin McKay as trustees of the Atkinson Family Trust

16 Brett Avenue
Takapuna
Auckland 0622
New Zealand

Capital Royalty Partners II – Parallel Fund B (Cayman) L.P., Capital Royalty Partners II – Parallel Fund A L.P., Capital Royalty Partners II L.P., Capital Royalty Partners II (Cayman) L.P.

1000 Main Street,
Suite 2500
Houston, TX 77002

Dear Directors, Trustees and Partners

AFT Pharmaceuticals Limited: Placement and sell down agreement

1. APPOINTMENT

1.1 AFT Pharmaceuticals Limited ("**AFT**"), Hartley Atkinson and Colin McKay as trustees of the Atkinson Family Trust ("**AF Trust**") and Capital Royalty Partners II – Parallel Fund B (Cayman) L.P., Capital Royalty Partners II – Parallel Fund A L.P., Capital Royalty Partners II L.P., Capital Royalty Partners II (Cayman) L.P. (collectively, "**CRG**", CRG together with AF Trust being the "**Vendors**" and the Vendors together with AFT being the "**Offerors**") appoint Forsyth Barr Limited ("**FBL**") and Bell Potter Securities Limited ("**BP**") as lead managers (together, the "**Lead Managers**"), and Forsyth Barr Group Limited ("**FBGL**") and BP to act as underwriters (together, the "**Underwriters**") in connection with:

- (a) a placement of new fully paid ordinary shares in AFT ("**Shares**") for an aggregate issue price of \$10,000,000 ("**Placement**");
- (b) a sell down of existing Shares held by AF Trust ("**AF Trust Sell Down**") for an aggregate sale price of \$3,500,000; and
- (c) a sell down of 16,067,045 existing Shares held by CRG ("**CRG Sell Down**"),

(collectively, the "**Offer**"), to be conducted contemporaneously, for minimum aggregate proceeds of \$72,144,714 (the "**Minimum Proceeds**") on the terms and subject to the conditions set out in this letter ("**Agreement**"). Subject to the terms and conditions of this Agreement, the appointments under this clause confer on the appointees all powers, authorities and discretions which are necessary for, or reasonably incidental to, the performance of their functions as underwriters and lead managers respectively.

- 1.2 The Offerors have requested, and the Lead Managers and Underwriters have agreed, that the Lead Managers and Underwriters will jointly and cooperatively supply services to the Offerors in performing their respective roles contemplated by this Agreement.
- 1.3 Separately from the Offer, AFT intends to undertake an offer of Shares under a share purchase plan ("**SPP**"). The Lead Managers are appointed to lead manage the SPP and will perform the services set out in their engagement letter with AFT in relation to the SPP, but the SPP is not underwritten.

2. **TERM**

This Agreement commences on the date that it is signed by all parties and continues until terminated.

3. **SAME-CLASS OFFER REGIME**

- 3.1 The Offer will be undertaken in reliance on the exclusion contained in clause 19 ("**Clause 19**") of Schedule 1 of the Financial Markets Conduct Act 2013 ("**FMCA**").

- 3.2 AFT represents and warrants to the Lead Managers and Underwriters, and will procure that:

- (a) the Offer is and will remain eligible to be made in reliance on Clause 19 and that the Offer will be made in compliance with the relevant provisions of the FMCA, the Financial Markets Conduct Regulations 2014 ("**FMCR**") and the NZX Listing Rules;
- (b) AFT is, as of the date of this Agreement, and will at all times until the allotment and transfer of Shares under the Offer be, in compliance with:
 - (i) the "continuous disclosure obligations" (for the purposes of clause 20 of Schedule 8 of the FMCR) that apply to it, but for any "excluded information" (as that term is defined in clause 20(5) of Schedule 8 of the FMCR), provided that any such "excluded information" as at the date of the Cleansing Notice (as defined below) will be disclosed pursuant to clause 20(2)(e) of Schedule 8 of the FMCR and in accordance with clause 13.1(a) of this Agreement; and
 - (ii) the "financial reporting obligations" (as that term is defined in clause 20(5) of Schedule 8 of the FMCR) that apply to it; and

- 3.3 AFT and AF Trust represent and warrant to the Lead Managers and Underwriters, and will procure that, on the date and by the time specified in the timetable set out in Schedule 1 ("**Timetable**"), AFT and AF Trust will file a "cleansing notice" with NZX Limited ("**NZX**") and ASX Limited ("**ASX**") pursuant to, and satisfying the requirements of:

- (a) Clause 19 and clause 20 of Schedule 8 of the FMCR;
- (b) paragraph 708A(12G) of the Corporations Act 2001 (Cth) as notionally inserted by ASIC Instrument 17-0484;
- (c) ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 as amended by ASIC Instrument 20-0572,

in a form approved in writing by the Lead Managers and Underwriters ("**Cleansing Notice**").

4. PLACEMENT ARRANGEMENTS

4.1 The Offerors and Lead Managers will arrange the Offer in the following manner:

- (a) the Offer will be managed by the Lead Managers and underwritten by the Underwriters, at a floor price of \$3.65 per Share ("**Underwritten Price**"), on the terms and subject to the conditions set out in this Agreement;
- (b) the Lead Managers will conduct a bookbuild ("**Bookbuild**") on the Bookbuild Date (as defined in the timetable) to determine demand for the Shares offered under the Offer at prices at and above the Underwritten Price from Participants (defined below). After conclusion of the Bookbuild, the Lead Managers will advise the Offerors of the volume of demand at various price points and:
 - (i) the Offerors and the Lead Managers will determine and agree, in each case acting reasonably and having regard to the outcome of the Bookbuild, the prospects of success and settlement of the Offer and the stability of the market for the Shares after completion of the Offer, the price per Share, being the Underwritten Price or such greater clearing price under the Bookbuild at which Shares can be allocated and issued or transferred to Participants for aggregate proceeds of no less than the Minimum Proceeds under the Offer in accordance with this Agreement (that price being the "**Offer Price**"); and
 - (ii) AFT and the Lead Managers will determine and agree, in each case acting reasonably, having regard to the matters referred to in clause 4.1(b)(i), the allocation of Shares to Participants (at the Offer Price),

provided that:

- (iii) no Shares will be allocated to a Participant whose credit risk the Lead Managers are not willing to accept (acting reasonably); and
 - (iv) if the Offerors and the Lead Managers are unable to agree on the Offer Price (each acting reasonably and having regard to the matters set out above), the Offer Price will be the Underwritten Price. The Offer Price will be the same for all Shares under the Offer;
- (c) under the Offer, the Offerors will issue or transfer (as applicable) a number of Shares calculated as follows (the aggregate number of Shares so issued or transferred being the "**Aggregate Offer Shares**"):
- (i) AFT will issue, at the Offer Price, the number of Shares under the Placement required to receive gross proceeds equal to the amount specified in clause 1.1(a) ("**New Shares**");
 - (ii) AF Trust will transfer, at the Offer Price, the number of Shares under the AF Sell Down required to receive gross proceeds equal to the amount specified in clause 1.1(b) ("**AF Trust Sale Shares**"); and
 - (iii) for clarity, CRG will transfer, at the Offer Price, under the CRG Sell Down, the number of Shares specified in clause 1.1(c) ("**CRG Sale Shares**"),

in the case of (i) and (ii) subject to any necessary rounding;

- (d) the Offerors must comply with the Timetable in respect of the Offer. The Timetable may be amended by the Offerors with the prior written consent of both of the Lead Managers, such consents not to be unreasonably withheld;
- (e) the Lead Managers will market the Shares to investors who are (with such persons being "**Participants**"):
 - (i) persons the Lead Managers reasonably believe to be in New Zealand;
 - (ii) in Australia, persons who AFT considers are persons to whom an offer of Shares may lawfully be made without disclosure under Part 6D.2 of the Corporations Act 2001 (Cth) (as modified by any applicable regulatory instrument), it being acknowledged that, in the case of Shares offered under the CRG Sell Down (but not under the Placement or AF Trust Sell Down), this includes Australian retail investors; and
 - (iii) in Hong Kong, to persons that are "professional investors" as defined under the Securities and Futures Ordinance, Chapter 571 of the Laws of Hong Kong.
 - (iv) in Singapore, to persons that are an "institutional investor" (as defined in the Securities and Futures Act, Chapter 289 of Singapore (the "**SFA**") or an "accredited investor" (as defined in the SFA);
 - (v) outside of the above jurisdictions, persons who AFT considers (acting reasonably) are persons to whom offers and issues of the Shares may lawfully be made without any other lodgement, registration or approval with or by a governmental authority (other than one with which the Offerors, in their absolute discretion, have undertaken in writing to comply). In those circumstances investor representations will be sought from the investors in those additional jurisdictions using the formulations of those representations in the NZ Master ECM Terms,

and, for the purposes of sub-clauses (ii) and (v) above, the Offerors will promptly advise the Lead Managers if it considers that any person made known to it by the Lead Managers as a potential subscriber for or acquirer of Shares in the Offer is not a person to whom it considers that the offer can lawfully be made in compliance with those sub-clauses;
- (f) the Offer will be managed by the Lead Managers on the terms set out in this Agreement;
- (g) settlement of the Offer, the Underwriter's underwriting obligations set out in this Agreement, issue of the New Shares and sale of the AF Trust Sale Shares and the CRG Sale Shares is subject to and conditional on delivery to the Lead Managers and the Underwriters of a duly executed copy of the certificate set out in Schedule 2 signed by the Chief Executive Officer and the Chief Financial Officer of AFT ("**Certificate**"), by and dated as at 5:00pm on the Business Day (as that term is defined in the NZX Listing Rules ("**Business Day**") immediately preceding the Settlement Date (as defined below);
- (h) the Offerors must not decline any allocation of Shares to a particular Participant at or above the Underwritten Price, except if, and to the extent that, the Offer is oversubscribed or such allocation would contravene any applicable law; and
- (i) settlement of the Offer will occur in accordance with clause 5.

- 4.2 The parties acknowledge that the Offer pricing, marketing, offer structure, process, allocation process, moratorium and restrictions on offers or solicitations of Shares to persons and to places outside of the jurisdictions referred to in clause 4.1(e) are for the purposes of, and are reasonably necessary for, the implementation and success of the Offer. The parties also acknowledge the Offerors' express instructions and authorisations for the Lead Managers and Underwriters to communicate with each other and to work together (including with any applicable syndicate group) in relation to the Lead Managers' and Underwriters' roles and as otherwise required for the purpose of the Offer (including without limitation, to negotiate the terms of this Agreement). Notwithstanding that each Lead Manager and Underwriter will be involved in jointly and cooperatively supplying services to the Offerors under this Agreement, each Underwriter must make its own independent decisions whether to hold or sell any Shortfall Shares (defined below), and if so, for how long and at what price.

5. SETTLEMENT

- 5.1 The settlement date for the Offer will be 15 June 2020 ("**Settlement Date**").

- 5.2 Settlement procedures:

- (a) CRG will comply with the settlement procedures agreed with the Lead Managers and ensure that the CRG Sale Shares are made available to the Underwriters and Lead Managers consistent with and by the time required pursuant to such agreed procedures;
- (b) AF Trust will comply with the settlement procedures agreed with the Lead Managers and ensure that the AF Trust Sale Shares are made available to the Underwriters and Lead Managers consistent with and by the time required pursuant to such agreed procedures; and
- (c) by 9:30 am on the Settlement Date, AFT will deliver, or cause to be delivered, the New Shares to the account or accounts nominated by, the Underwriters and Lead Managers,

in each case, to facilitate settlement on a delivery versus payment basis (and strictly on the basis that such Shares are held by the Underwriters for the benefit of the relevant Offeror pending settlement on the Settlement Date).

- 5.3 On the Settlement Date, settlement of the Offer will occur by 5:00pm on a delivery vs payment basis between the Lead Managers and the Participants to whom Shares are allocated ("**Subscribers**") in accordance with procedures to be agreed between the Offerors and the Lead Managers (each acting reasonably) in consultation with AFT's share registrar. One or more Lead Managers and/or such other person(s) nominated by the Lead Managers and Underwriters will be appointed as settlement agent.

- 5.4 If, after completion of the bookbuild process in respect of the Offer set out in clause 3.1 and settlement on the Settlement Date of the resulting transactions, the Aggregate Offer Shares have not all been allocated to and settled by Participants in accordance with this Agreement (the difference between the number of Shares allocated and settled by Participants and the number of Aggregate Offer Shares being the “**Shortfall Shares**”), the Underwriters will at 5.00pm on the Settlement Date make or procure subscriptions for or purchases of (as applicable) those Shortfall Shares at the Offer Price in the proportions set out in clause 6.1. If any refusal by the Offerors to accept a bid for Shares under the Offer at or above the Offer Price and in accordance with the terms of this Agreement results in there being Shortfall Shares, the Underwriters will not be obliged to make or procure subscriptions for or purchases of those Shortfall Shares that are attributable to that refusal.
- 5.5 The Underwriters may deduct from the payment for the Shortfall Shares all fees payable or that become payable by the Offerors to the Lead Managers or Underwriters pursuant to this Agreement.
- 5.6 AFT will:
- (a) ensure that the issue of the New Shares occurs no later than the Settlement Date; and
 - (b) notify NZX of the issue of New Shares in accordance with the requirements of NZX Listing Rule 3.13.1.
- 5.7 CRG will ensure that the transfer of CRG Sale Shares occurs no later than the Settlement Date.
- 5.8 AF Trust will ensure that the transfer of the AF Trust Sale Shares occurs no later than the Settlement Date.
- 5.9 The Offerors confirm that, without relieving the Underwriters from their obligations or any liability under this Agreement, the Underwriters may obtain, in accordance with relevant laws, sub-underwriting commitments in respect of the Offer and distribute, in accordance with relevant laws, copies of material and information in connection with the Offer for the purpose of obtaining sub-underwriting in respect of the Offer.
- 5.10 On the Settlement Date, the Offerors assign to the Underwriters all contractual rights and recourse they may have (if any) against any Subscribers who default on their payment obligation with respect to subscribing for or acquiring the Shares (“**Defaulting Subscribers**”). If the Offerors are unable to assign to the Underwriters all of the contractual rights and recourse referred to in the preceding sentence, the Offerors undertake that they will assign such rights when and to the extent they are legally able to and in the interim will hold such rights on trust for the Underwriter.

6. UNDERWRITING OBLIGATIONS

- 6.1 Notwithstanding any other provision of this Agreement, the obligations of each Underwriter under this Agreement are several (and not joint, or joint and several) and their respective obligations to underwrite subscriptions and transfers of Shares pursuant to clause 5.4 are in the proportions set out as follows:

Underwriter	Underwriting Commitment
FBGL	50%

BP	50%
Total	100%

6.2 Without limiting the rights of the Underwriters under clause 10, if, for whatever reason, one Underwriter does not subscribe and pay for all or part of its underwriting commitment (the unfulfilled commitment being the "**Default Commitment**") under clause 5.4 ("**Defaulting Underwriter**"), the other Underwriter ("**Remaining Underwriter**") may elect by notice in writing to the Offerors and the Defaulting Underwriter within two Business Days of the Defaulting Underwriter failing to duly satisfy its underwriting commitment under this Agreement in full, to assume the obligations of the Defaulting Underwriter with respect to all or part of that Default Commitment. In the event that the Remaining Underwriter exercises its discretion not to assume all of the Default Commitment, the Remaining Underwriter will use reasonable endeavours, for a period of two Business Days, to work with the Offerors to identify one or more mutually acceptable replacement underwriters to assume all or part of the Default Commitment not assumed by the Remaining Underwriter.

6.3 If the Remaining Underwriter assumes any of the Default Commitment, then the Remaining Underwriter, in addition to the fees to which it is entitled under clause 7, will, subject to the performance of its obligations in accordance with this Agreement, also be entitled to (and the Defaulting Underwriter shall have no entitlement to any part of) the fees, in relation to the Default Commitment assumed by the Remaining Underwriter, that would have been payable to the Defaulting Underwriter if the Defaulting Underwriter had not failed to satisfy its underwriting commitment under this Agreement.

6.4 No action taken pursuant to this clause 6 shall relieve any Defaulting Underwriter from liability in respect of its default.

7. UNDERWRITING AND PLACEMENT FEES

7.1 In consideration of the Underwriters agreeing to underwrite the Offer in accordance with this Agreement, each Offeror will, immediately following allotment of Shares on the Settlement Date, pay to the Lead Managers and Underwriters directly from their gross proceeds of the Offer the fees ("**Underwriting Fees**") set out in the separate engagement letter between that Offeror, the Lead Managers and the Underwriters (those engagement letters together, the "**Engagement Letters**").

7.2 For clarity, both the Lead Managers and Underwriters will be entitled to recover costs and expenses associated with the Offer from the Offerors on the same basis and terms as set out in the Engagement Letters, whether or not they are also a party to the Engagement Letters.

8. MARKETING MATERIAL

8.1 The parties agree that:

- (a) the marketing materials to be used in connection with the Offer (being the market announcement of the launch of the Offer, the Cleansing Notice and Investor presentation) (the "**Marketing Documents**") will be in the form agreed between AFT and the Lead Managers and Underwriters prior to entry into this Agreement; and
- (b) such Marketing Documents will be released by AFT to NZX and ASX at the same time as, or prior to, the release of the Cleansing Notice.

9. WARRANTIES AND REPRESENTATIONS

9.1 **Offeror warranties:** The Offerors each represent and warrant (in respect of itself only) to the Lead Managers and Underwriters as at the date this Agreement is signed by all parties to it and at all times until allotment and transfer of the Shares offered under the Offer on the Settlement Date (by reference to the facts and circumstances then existing) as follows:

(a) *Validly existing:*

- (i) in the case of AFT and CRG, they are body corporates validly existing under the laws of their place of incorporation and have full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates; and
- (ii) in the case of AF Trust, it is validly existing under the laws of New Zealand and has the power under its trust deed to enter into and perform its obligations under this Agreement.

(b) *Authority:* The Offeror's entry into this Agreement and the performance of its obligations under it:

- (i) has been duly authorised, and it has taken all other corporate, trustee or other applicable action that is necessary or desirable to authorise its entry into this Agreement and its performance of the transactions that this Agreement contemplates (and no shareholder, trustee or beneficiary approvals or consents are required for such transactions);
- (ii) does not contravene any provision of its formational documents, including its constitution or trust deed (as applicable) or any other agreement, instrument, authorisation, undertaking or other arrangement binding on it; and
- (iii) does not contravene any law, order or regulation applicable to it (except to the extent, if any, that any action or omission of the Lead Managers or the Underwriters that constitutes a breach of this Agreement causes any such contravention),

and this Agreement will be validly executed and delivered, and will (once validly executed and delivered by the Lead Managers, the Underwriters and each other Offeror) be legal, valid and binding on it and enforceable against it in accordance with its terms (subject to laws generally affecting enforceability).

(c) *Shares Free of Encumbrances:*

- (i) the Shares issued (in the case of AFT) or transferred (in the case of AF Trust and CRG) in connection with the Offer will be fully paid, and rank pari passu with all existing fully paid ordinary shares on issue in AFT and will be freely tradable (subject to any restrictions required or imposed under any applicable laws or regulations); and
- (ii) the Subscribers (and Underwriters, if applicable) will acquire good marketable title to the Shares free and clear of any liens, claims, charges, pre-emptive rights or other security interests or encumbrances (except as may arise under law in any relevant jurisdiction or under agreements or arrangements entered into by any Subscriber),

provided that, for clarity, (c)(i) and (ii) only apply to the Offerors in respect of the Shares to be issued or transferred by that Offeror (as applicable) pursuant to the Offer.

- (d) *Misleading/deceptive conduct*: the Offeror has not engaged in, and will not engage in, conduct that is misleading or deceptive or which is likely to mislead or deceive in connection with the Offer.
- (e) *Information provided to Lead Managers and Underwriters*: All information and representations provided or made by or on behalf of the Offeror to the Lead Managers and Underwriters in respect of AFT and/or the Offer are (taken as a whole and in light of the circumstances of that provision or making) true and accurate in all material respects, and the Offeror has not omitted to give the Lead Managers and Underwriters any information known to it (other than information publicly available) which is material to AFT, its business, the Offer or the Offer Price.
- (f) *No manipulation*: neither it nor any of its Affiliates (as defined in clause 9.3 below) 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 Shares in violation of any applicable law.
- (g) *Insider trading*: in respect of the Vendors only, the sale of the Shares by the Vendor will not constitute a violation by the Vendor (or its Affiliates) of applicable insider trading laws.

9.2 **AFT warranties**: AFT represents and warrants to the Lead Managers and Underwriters as at the date this Agreement is signed by all parties to it and at all times until allotment and transfer of the Shares offered under the Offer on the Settlement Date (by reference to the facts and circumstances then existing) as follows:

- (a) *Cleansing Notice*: The Cleansing Notice complies with the requirements of the FMCA and the FMCR.
- (b) *Eligibility for Same Class Regime*: AFT is (and will remain) eligible to undertake or facilitate the Offer in reliance on Clause 19 and the FMCR. Without limiting the foregoing:
 - (i) AFT is (and will remain) in compliance with the “continuous disclosure obligations” (for the purposes of clause 20 of Schedule 8 of the FMCR) applicable to it in relation to its existing shares and the “financial reporting obligations” (as defined in clause 20(5) of Schedule 8 to the FMCR) that apply to it; and
 - (ii) there is no “excluded information” (as defined in clause 20(5) of Schedule 8 to the FMCR) in respect of AFT, the existing shares, the Shares or the Placement that is not set out in the Cleansing Notice, the Marketing Documents or a market announcement approved in writing by the Lead Managers and Underwriters pursuant to clause 13.1(a).
- (c) *No False or Misleading Information*: No information disclosed by AFT to its shareholders, NZX, ASX or otherwise made publicly available by AFT since AFT’s most recently published annual report (including, upon their release to the NZX Main Board, the Marketing Documents):

- (i) contained any false, misleading or deceptive statement of a material fact; or
 - (ii) omitted to state a particular fact required to be stated in that information in order to make the statements therein, in light of the circumstances in which they were made, not false, misleading or deceptive to a material extent; or
 - (iii) was misleading or deceptive, or likely to mislead or deceive, in a material respect as at the date that information was disclosed or made publicly available by AFT; or
 - (iv) contained any material representation which AFT did not, when that information was released, have reasonable grounds to make.
- (d) *AFT will provide all material information to the Lead Managers and Underwriters:* AFT will provide the Lead Managers and Underwriters with all material information in respect of AFT, its business and prospects which the Lead Managers and Underwriters require to fulfil their roles under this Agreement or which may affect the likelihood of a successful Offer, the Offer Price and/or the perception of the Offer from the point of view of Participants. For the avoidance of doubt, the obligation on AFT under this clause includes disclosure of material information regardless of whether or not the exceptions to disclosure in NZX Listing Rule 3.1 apply to that information.
- (e) *No litigation:* Neither AFT nor any of its related companies (as defined in the Companies Act 1993 read as if the word "company" in that definition includes any body corporate, wherever incorporated) is involved in any litigation, arbitration or administrative proceeding relating to claims or amounts which are material in the context of the Offer nor is any such litigation, arbitration or administrative proceeding pending or threatened.
- (f) *Solvency:* AFT, together with its subsidiaries as a consolidated group, is solvent and (other than as disclosed in the Financial Information, as defined below) no circumstances exist or may reasonably be expected to arise in the next 2 years, as a result of which AFT together with its subsidiaries as a consolidated group may cease to be solvent or able to pay its debts as and when they fall due.
- (g) *Financial Information:* AFT's 31 March 2020 audited financial information released on 20 May 2020, together with the notes thereto and commentary ("**Financial Information**"), presents fairly in all material respects the combined financial position of AFT and its subsidiaries as of the dates shown and the financial performance and cash flows for the periods shown in accordance with NZ GAAP and the basis of preparation and combination and assumptions set out in the notes to those statements applied on a consistent basis throughout the periods involved. The Financial Information has been prepared in good faith, and the assumptions used in preparing the Financial Information are reasonable and the adjustments therein are appropriate to give effect to the transactions and circumstances referred to therein.
- (h) *Financial position:* Since the date of the Financial Information, except as otherwise expressly disclosed in the Marketing Documents or by way of announcement to the NZX and ASX prior to the date of this Agreement:
 - (i) the business of AFT and its subsidiaries has been carried on in the ordinary and usual course in all material respects; and

- (ii) as far as AFT is aware, there has been no occurrence which has or will (either itself or together with any other occurrence) materially and adversely affect the value of the Shares, the financial position, profitability or prospects of AFT or any of its subsidiaries or any of the property or assets of AFT or its subsidiaries.
- (i) *Brokers' fees and commissions:* Except as disclosed in the Marketing Documents or in writing to the Lead Managers and Underwriters prior to the date of this Agreement, there are no contracts, agreements or understandings between AFT and any person that would give rise to a valid claim against AFT or a Lead Manager or Underwriter for a brokerage commission, finder's fee or other like payment in connection with the Shares offered in connection with the Offer.
- (j) *Borrowing:* There is no material indebtedness of AFT or any subsidiary other than that disclosed in the Financial Information.
- (k) *No contravention:* Neither AFT nor any subsidiary has contravened or will contravene, by its participation under the Offer, any material provision of its constitution, the FMCA, the FMCR, the Takeovers Code made pursuant to the Takeovers Act 1993 as set out in the Schedule to the Takeovers Regulations 2000 ("**Takeovers Code**"), the Australian Corporations Act 2001 (Cth) ("**Corporations Act**") or any other applicable law, the NZX Listing Rules or ASX Listing Rules (including as modified by any applicable NZX or ASX waiver), any material requirement of NZX or ASX or the New Zealand Financial Markets Authority or Australian Securities and Investments Commission, or any material agreement binding on it, that is material in the context of the Offer.
- (l) *Material Contracts:* There:
 - (i) is no contract which is material to AFT or any subsidiary which has not been disclosed to NZX and ASX, if required by the NZX Listing Rules, or to the Lead Managers and Underwriters prior to the date of this Agreement; and
 - (ii) has not been, and will not be before the Settlement Date be, a breach by AFT or any subsidiary in a material respect of any provision of any contract which is material to AFT or any subsidiary.
- (m) *Licences:* AFT and each subsidiary holds all licences, permits, authorisations or consents which are material to the conduct of its business and all such licences, permits, authorisations and consents are in full force and effect and not liable to be revoked or not renewed.
- (n) *Quotation:* It is the current intention of the directors of AFT to maintain the quotation of the Shares (including the New Shares) on the NZX Main Board and on the ASX, and, so far as AFT is aware, there is no reason why such quotation should not be maintained.
- (o) *Certificate:* The contents of the Certificate given to the Lead Managers and Underwriters will be true and correct in all respects as at 5:00pm on the Business Day prior to the Settlement Date.
- (p) *United States:*
 - (i) **(foreign private issuer)** AFT is a "foreign private issuer" as defined in Rule 405 under the Securities Act of 1933 ("**US Securities Act**").

- (ii) **(no substantial US market interest)** There is no "substantial US market interest" (as defined in Rule 902(j) under the US Securities Act) in the Shares or any security of the same class or series as the Shares.
- (iii) **(no directed selling efforts)** With respect to those Shares under the Offer sold in reliance on Regulation S under the US Securities Act, none of AFT, any of its Affiliates, nor any person acting on behalf of any of them (other than the Lead Managers, Underwriters, any of their Affiliates or any person acting on behalf of any of them, as to whom the AFT makes no representation or warranty) has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the US Securities Act).
- (q) *Due diligence committee:*
 - (i) All the components of the due diligence system and procedures have been, or will prior to distribution of the Marketing Documents, be implemented in accordance with the due diligence process memorandum (being that due diligence process memorandum prepared for the purpose of this Offer adopted by the due diligence committee in the form agreed with the Lead Managers and Underwriters prior to the date of this Agreement) ("**DDPM**") and the final due diligence report of the due diligence committee (as contemplated by the DDPM), including any and all reports, opinions, letters, sign-offs and certificates comprising attachments to the final due diligence report has been received by the Lead Managers and Underwriters.
 - (ii) All responses to the senior management questionnaire completed by AFT were, when provided to the Lead Managers and Underwriters, true, complete (including to the extent that there are no omissions of material information) and accurate in all material respects.

Each of the above paragraphs and sub-paragraphs in this clause 9.2 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph. The warranties given pursuant to this clause are qualified by matters that are fully and fairly disclosed in the Marketing Documents or which have been fully and fairly disclosed to the NZX and ASX prior to the date of this Agreement, but are not otherwise qualified. For clarity, the warranties are not qualified by any the Lead Managers' or Underwriters' involvement in the preparation of the materials distributed in connection with the Offer or by reason of participation in the due diligence investigations or committee.

9.3 Lead Manager and Underwriter warranties: The Lead Managers and Underwriters each represent and warrant (in respect of itself only) to each other and to the Offerors as at the date this Agreement is signed by all the parties, and at all times while undertaking the matters set out in this Agreement until allotment and transfer of the Shares offer under the Offer on the Settlement Date, that (by reference to the facts and circumstances then existing):

- (a) *Validly existing body corporate:* It is a body corporate validly existing under the laws of its place of incorporation and has full legal capacity and power to enter into this Agreement and to carry out the transaction that this Agreement contemplates.

- (b) *Authority:* Its entry into this Agreement and the performance of its obligations under it:
- (i) has been duly authorised, and it has taken all other 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; and
 - (ii) does not contravene any provision of its constitution or any other agreement, instrument, authorisation, undertaking or other arrangement binding on it,

and this Agreement will be validly executed and delivered, and will (once validly executed and delivered by the Offerors) be legal, valid and binding on it and enforceable against it in accordance with its terms (subject to laws generally affecting enforceability).

- (c) *Market manipulation:* Neither it nor any of its Affiliates (or any person acting on behalf of any of them) 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 Shares in violation of any applicable law.
- (d) *Licences and authorities:* It holds all requisite licences and authorities to undertake the matters contemplated by this Agreement.
- (e) *Compliance with law:* It will use reasonable endeavours to comply with all applicable laws and regulations in the jurisdictions in which the Shares may be offered (including all applicable requirements of NZX and ASX) in undertaking the matters contemplated in this Agreement, except to the extent that any non-compliance on its part has been caused or results from an act or omission of the Offerors or any Affiliates of the Offerors, including reliance on information or advice provided by or procured by the Offerors or any Affiliates of the Offerors.
- (f) *No direct selling efforts:* With respect to those Shares under the Offer sold in reliance on Regulation S under the US Securities Act, neither it nor any of its Affiliates or 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 US Securities Act). *(U.S. Securities Act):* It acknowledges and agrees that the Shares have not been, and will not be, registered under the US Securities Act, and may only be offered or sold in "offshore transactions", as defined in and in reliance on Regulation S under the US Securities Act.

9.4 **Affiliates:** For the purposes of this Agreement, "**Affiliates**" includes, in respect of any person, any other person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person; and "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, or 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.

10. RELIEF OF OBLIGATIONS

10.1 **Acknowledgement:** The Lead Managers and Underwriters acknowledge receipt from AFT of the following prior to the date of this Agreement:

- (a) a copy of ASIC Instrument 20-0572 (the "**ASIC Offer Relief**");

- (b) a legal opinion addressed to the Lead Managers and Underwriters and in a form and on reliance terms acceptable to the Lead Managers and Underwriters from AFT's New Zealand legal advisors (being Harmos Horton Lusk Limited) on or prior to the date of this Agreement confirming:
 - (i) in respect of the creation and implementation of an appropriate due diligence process customary in offerings of this kind and as to the adequacy of that process and availability of applicable defences; and
 - (ii) that the Marketing Documents comply with all Applicable Laws in New Zealand;
- (c) a legal opinion addressed to the Lead Managers and Underwriters and in a form and on reliance terms acceptable to the Lead Managers and Underwriters from CRG's New Zealand legal advisors (being Chapman Tripp) in relation to compliance with Applicable Laws in New Zealand; and
- (d) a memorandum of legal advice addressed to the Lead Managers and Underwriters and in a form and on reliance terms acceptable to the Lead Managers and Underwriters from AFT's Australian legal advisors (being Herbert Smith Freehills) on or prior to the date of this Agreement confirming that the Marketing Materials, the Offer and the SPP comply with all Applicable Laws in Australia.

10.2 **Conditions:** The Lead Managers' and Underwriters' obligations under this Agreement (other than under clause 15, which become binding upon signing) do not become binding until the satisfaction of each of the following conditions precedent (or their waiver by each Lead Manager and Underwriting, if capable of waiver):

- (a) prior to the Offer Opening Time:
 - (i) AFT receiving a waiver from NZX in respect of NZX Listing Rule 5.2.1, and such waiver providing that AFT may enter into this Agreement without shareholder approval (the "**NZX Waiver**"); and
 - (ii) AFT issuing an amended quotation application reflecting the change to the terms of issue of the Shares held by CRG that were issued on 20 May 2020 (being those Shares issued in respect of accumulated dividends on the redeemable preference shares that were converted by CRG on 20 May 2020) to remove their on-sale restriction.
- (b) AFT and AF Trust each issuing a cleansing notice in a form approved by the Lead Managers and Underwriters (acting reasonably) to NZX pursuant to clause 20 of Schedule 8 of the Financial Markets Conduct Regulations 2014 and as contemplated by ASIC Instrument 17-0484 and ASIC Instrument 20-0572 (in each case stating that it is in compliance with its continuous disclosure obligations, financial reporting obligations and that there is no information that is "excluded information" as defined in clause 20 of Schedule 8 to the Financial Markets Conduct Regulations 2014) by the time required by the Timetable;
- (c) NZX and ASX granting AFT a trading halt in respect of the existing Shares by the time contemplated by the Timetable and which operates for the period set out in the Timetable; and

- (d) the Marketing Documents being released to NZX and ASX by no later than 9:00am on the Bookbuild Date, in the form agreed between AFT and the Lead Managers and Underwriters.

10.3 **Endeavours to fulfil:** AFT must use reasonable endeavours to procure that the conditions in clauses 4.1(g) and 10.1 ("**Conditions**") are satisfied by their respective deadlines. The Conditions are for the benefit of the Lead Managers and Underwriters and may only be waived if agreed by both the Lead Managers and Underwriters (in their discretion).

10.4 **Termination events:** The Lead Managers and Underwriters may, without costs or liability, by written notice to AFT terminate their obligations under this Agreement at any time after they sign this Agreement and up to allotment and transfer of all of the Shares on the Settlement Date if:

- (a) NZX or ASX suspends trading in quoted securities in AFT (other than in accordance with the trading halt being granted and lifted in accordance with the Timetable) or removes AFT's status as a listed issuer;
- (b) (*) any Offeror contravenes any provisions of the FMCA, FMCR, the Takeovers Code, the Corporations Act or any rules, regulations or applicable laws or any requirements of NZX or ASX (including the NZX Listing Rules and ASX Listing Rules), except to the extent that any such contravention is directly caused by any act by or omission by the Lead Managers or Underwriters in breach of this Agreement;
- (c) (*) the New Zealand Financial Markets Authority, Australian Securities and Investments Commission or any other government agency or regulatory body:
 - (i) issues, or threatens to issue, proceedings;
 - (ii) initiates, commences or threatens to commence any inquiry or investigation; or
 - (iii) exercises any of its powers or issues any adverse orders (or indicates that it is considering doing so),

in relation to an Offeror or the Offer;

- (d) official quotation of the Shares (including the New Shares) on the NZX Main Board and the securities exchange operated by ASX is denied or the New Shares will otherwise not be quoted on allotment or transfer;
- (e) (*) an event or series of events, a circumstance or circumstances or any matter or matters or information, individually or together (including any breach of a warranty or a covenant of an Offeror under this Agreement) that occurs, or of which the Lead Managers and Underwriters first becomes aware, after the date of this Agreement and which in the reasonable opinion of the Lead Managers and Underwriters has or is likely to have, or once disclosed will have or is likely to have, an adverse effect on the general affairs, management, business prospects, financial position or results of the operations of AFT, otherwise than as contemplated by the Marketing Documents or any of the effects described in (v) below;
- (f) except as disclosed in the Marketing Documents, AFT alters its capital structure or constitution without the prior written consent of the Lead Managers and Underwriters;

- (g) (*) any actual or proposed change in law, regulation or the NZX Listing Rules, ASX Listing Rules or any direction or policy of any government agency;
- (h) (*) the ASIC Offer Relief or the NZX Waiver is withdrawn or adversely modified at any time after it is granted;
- (i) (*) any material or fundamental change in financial, economic or political conditions affecting capital markets or financial markets in New Zealand, Australia, the United Kingdom, China, Hong Kong, Singapore, any member of the European Union or the United States or the outbreak of war or hostilities not presently existing or the escalation of existing hostilities in any jurisdiction;
- (j) (*) a general moratorium on commercial banking activities in New Zealand, Australia, the United Kingdom, any member of the European Union or the United States, being declared by the relevant central banking authority in any of those countries, or a material disruption in commercial banking or security settlement or clearance services in any of those countries;
- (k) any Offeror or any of its directors, chief executive officer or chief financial officer engages in any fraudulent conduct or activity, whether or not in connection with the Offer;
- (l) the S&P/NZX 50 Index or S&P/ASX 200 Index falls by 10% or more from its Closing Level:
 - (i) at any time on the Business Day on which the Bookbuild completes; or
 - (ii) at any time after the Business Day on which the Bookbuild completes and at the close of trading of the relevant financial product market on the Business Day after such decline first occurs, the applicable index must also have declined by 10% or more from its Closing Level; or
 - (iii) at any time on (A) the Business Day before the Settlement Date or (B) the Settlement Date,

where "Closing Level" means the level of the NZX 50 Index or S&P/ASX 200 Index at the close of trading of the relevant financial product market on the Business Day immediately preceding the date of this Agreement;

- (m) any information or statement contained in the Marketing Documents or cleansing notice or any other advertising or promotional materials or other documents prepared or approved by AFT being false, deceptive or misleading or likely to mislead or deceive (including by omission) or unsubstantiated (being a statement for which AFT does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated) in any material adverse respect;
- (n) (*) AFT becomes required to give, or gives a correcting notice under clause 21 of Schedule 8 of the FMCR;
- (o) (*) any adoption by the Reserve Bank of New Zealand of a policy or direction in respect of which there has not been a detailed announcement prior to the date of this Agreement;
- (p) (*) any change in the senior managers (as defined in the FMCA) or the board of directors of AFT occurs or is announced;

- (q) (*) an Offeror defaults in the performance of any of its obligations under this Agreement;
- (r) the Offerors default in their settlement obligations pursuant to clause 5;
- (s) the Certificate given to the Lead Managers or Underwriters being false, misleading, deceptive or inaccurate;
- (t) any aspect of the Offer, including the Placement, AF Trust Sell Down or CRG Sell Down is withdrawn or purported to be withdrawn; or
- (u) (*) a representation or warranty given by an Offeror in this Agreement is not true or correct (or becomes untrue or incorrect),

provided that, in the case of an event above marked (*), the Lead Managers and Underwriters may only terminate their obligations if, in their reasonable opinion, the circumstances or combinations thereof:

- (v) have or could reasonably be expected to have, or once disclosed will or are likely to have, a material adverse effect on:
 - (i) the outcome of the proposed Offer;
 - (ii) an Offeror's ability to issue or transfer (as applicable) the Shares the subject of the Offer or the ability of Subscribers to settle their obligations under the Offer;
 - (iii) the price at which Shares are traded on the NZX Main Board or the securities exchange operated by ASX after the Offer (including the Settlement Date); or
 - (iv) AFT or its subsidiaries, or their business operations, management, assets, liabilities, financial position, profits, losses, earnings position, shareholders' equity or prospects; or
- (w) would, or would be likely to give rise to a material liability for the Lead Managers or Underwriters or their Affiliates under New Zealand, Australia or any other jurisdiction's laws; or
- (x) has given rise to or is likely to give rise to a contravention by the Lead Managers or Underwriters or their Affiliates of any applicable law or the NZX Participant Rules, or any such person being involved in such a contravention,

except in the case of paragraphs (w) and (x) above where the relevant event or matter results from a material breach of this Agreement by a Lead Manager or an Underwriter.

10.5 **Effect of termination:**

- (a) In the event that a Lead Manager or an Underwriter (in the case of an Underwriter, the "**Terminating Underwriter**") validly terminates its obligations under this Agreement pursuant to clause 10.4, it will be relieved of its obligations under this Agreement.

- (b) The exercise by a Terminating Underwriter of its rights under clause 10.4 does not automatically terminate the obligations of the Lead Managers or Underwriter (in the case of the Underwriter, the "**Non-Terminating Underwriter**"). Nothing in this clause 10.5 limits the rights of a Lead Manager or Non-Terminating Underwriter under clause 10.4.
 - (c) The Non-Terminating Underwriter may, in its absolute and unfettered discretion, elect by notice in writing to the Offerors within two Business Days of the Terminating Underwriter terminating its obligations under this Agreement to assume all or part of the obligations of the Terminating Underwriter. In the event that the Non-Terminating Underwriter exercises its discretion not to assume all of the Terminating Underwriter's obligations, this Agreement will automatically terminate.
 - (d) If the Non-Terminating Underwriter gives notice under clause 10.5(c) prior to settlement that it will assume any obligations of the Terminating Underwriter under this Agreement which have not yet been performed, then, subject to the performance of its obligations in accordance with this Agreement, the Non-Terminating Underwriter, in addition to the fees to which it is entitled under the Engagement Letters, will also be entitled to the fees (in relation to the obligations of the Terminating Underwriter which it has assumed) that would have been payable to the Terminating Underwriter (and if the Terminating Underwriter is not also a Lead Manager, the fees that would have been payable to the terminating Lead Manager) if it had not terminated its obligations (including under the relevant Engagement Letters), and the Terminating Underwriter (and, if applicable, terminating Lead Manager) will not receive any part of those fees.
 - (e) Except as provided in the foregoing sentence, nothing in this clause 10.5 will limit the Terminating Party's right to be paid the applicable fees and expenses in accordance with the Engagement Letters.
- 10.6 Subject to clause 10.7, AFT, acting reasonably (including, where circumstances reasonably permit, after discussion with the Lead Managers and Underwriters), may at any time by notice to the Lead Managers and Underwriters prior to allotment of Shares on the Settlement Date cancel the Offer and terminate this Agreement.
- 10.7 Termination of this Agreement will not affect:
- (a) any rights or obligations arising from prior breach of this Agreement or the Engagement Letters; or
 - (b) clauses 7.2, 12, 15, 17.1, 17.2, 17.8 and 19 of this Agreement,
- all of which survive any termination.

11. NOTICE OF BREACH

- 11.1 Each party undertakes that it will notify the other parties in writing as soon as it becomes aware of a breach or potential breach by that party of any of the warranties applicable to it set out in clause 9 and additionally in the case of AFT, the occurrence of any of the termination events set out in clause 10.4.

12. INDEMNITY

- 12.1 Each of AFT and CRG jointly and severally agree that:

- (a) it will, to the maximum extent permitted by law, fully and effectively indemnify and hold harmless the Lead Managers, Underwriters and each of their respective related companies (for these purposes “related company” has the meaning given to it by in section 2 of the Companies Act 1993, reading references to a “company” as references to any body corporate wherever incorporated) and Affiliates, and each of the directors, officers, employees, advisers, and agents of those companies (each an “**Indemnified Person**”) from and against all claims, actions, proceedings, demands, liabilities, losses, damages, costs and expenses (including without limitation fees and disbursements of counsel and expenses incurred in connection with preparing for and responding to third party subpoenas) arising out of, or in connection with, this Agreement (including to the extent that an Affiliate acts as underwriter, which is deemed to be part of this Agreement) (including all claims, actions, proceedings or demands relating to the Agreement or the Offer) which any Indemnified Person may suffer or incur in any jurisdiction;
- (b) all costs and expenses incurred by any Indemnified Person in connection with the investigation of, preparation for or defence of, any pending or threatened investigation, enquiry, hearing, proceeding, litigation or claim within the terms of this indemnity or any matter incidental thereto are to be reimbursed by it promptly on demand; and
- (c) no Indemnified Person will have any liability whatsoever (whether directly or indirectly, in contract, tort (including negligence) or otherwise) to an Offeror or any of its related bodies corporate, or their respective directors, officers, employees, advisers and agents, for or in connection with things done or omitted to be done pursuant to this Agreement and the Lead Managers' and Underwriters' role;

(such actions, claims, damages, costs, expenses, etc., being collectively referred to herein as “**Losses**”) provided that the indemnity and reimbursement obligations in sub-clauses (a) and (b) above and the limitation of liability in sub-clause (c) above shall not apply to an Indemnified Person to the extent any Losses incurred by that Indemnified Person are finally determined by a judgment of a court of competent jurisdiction to have resulted primarily from an action, or omission to act, of that Indemnified Person which constitutes fraud, wilful misconduct, wilful default or gross negligence on the part of that Indemnified Person (“**Default or Negligence**”).

12.2 AF Trust agrees, to the maximum extent permitted by law, to fully and effectively indemnify and hold harmless each Indemnified Person from and against all claims, actions, proceedings, demands, liabilities, losses, damages, costs and expenses (including without limitation fees and disbursements of counsel and expenses incurred in connection with preparing for and responding to third party subpoenas) arising out of, or in connection with:

- (a) any of AF Trust's representations and warranties in this Agreement not being true and correct; or
- (b) the AF Trust breaching this Agreement,

except to the extent that:

- (c) any Losses are finally determined by a judgment of a court of competent jurisdiction to have resulted primarily from Default or Negligence; or
- (d) any Losses are judicially determined to have resulted from:

- (i) any of AFT's representations and warranties in this Agreement not being true and correct or AFT breaching this Agreement; or
 - (ii) any of CRG's representations and warranties in this Agreement not being true and correct or CRG breaching this Agreement.
- 12.3 Each Offeror will notify the Lead Managers and Underwriters if it becomes aware of any claim which may give rise to a liability under the indemnities in clause 12.1 and 12.2.
- 12.4 Without prejudice to any claim the Offerors may have against the Lead Managers or Underwriters, no proceedings may be taken against any Indemnified Person (other than the Lead Managers or Underwriters) ("**Released Person**") in respect of any claim an Offeror may have against a Lead Manager or Underwriter (a "**Relevant Claim**") and the Offerors unconditionally and irrevocably release and discharge each Released Person from any claim that may be made by the Offeror to recover from any Released Person any Losses relating to a Relevant Claim.
- 12.5 If, for any reason (other than by operation of the exceptions to the indemnity in clause 12.1) the indemnity in clause 12.1 is unavailable or insufficient to hold the Indemnified Person harmless in respect of the full amount of a Loss, AFT and CRG shall contribute promptly upon demand in such amount as is appropriate to reflect the relative fault of AFT and CRG on the one hand and of the Indemnified Person on the other hand in connection with the circumstances of the Loss.
- 12.6 To the extent permitted by applicable law, the Indemnified Persons will not in aggregate be liable for, or required to contribute for an amount in connection with, a Loss, or a series of Losses that may reasonably be considered to be sufficiently connected so as to be taken together as one Loss, in excess of the amount of all fees actually received (or which would have been received if the Offer settled) by the Lead Managers and Underwriters from the Offerors in connection with this Agreement and no Indemnified Person will be liable for an indirect loss of profits or for any other indirect or consequential Loss or damage.
- 12.7 The indemnity and limitations and exclusions of liability in this section:
 - (a) are, subject to clause 17.7, in addition to any liability which the Offerors might otherwise have, or any other rights which any Indemnified Person might otherwise have;
 - (b) are fully enforceable in accordance with their terms notwithstanding any act, matter, omission or thing that, but for this provision, would or might give rise to a defence or counterclaim to such enforcement;
 - (c) are intended to benefit each Indemnified Person for the purposes of the Contract and Commercial Law Act 2017 and each such person is entitled to enforce the provisions thereof; and
 - (d) shall survive and continue in full force and effect notwithstanding the termination of this Agreement.
- 12.8 The rights of an Indemnified Person under this Agreement will not in any way be prejudiced or affected by:
 - (a) any approval given by it concerning the Marketing Documents or any other involvement in preparation of materials distributed in connection with the Offer or in the due diligence committee;

- (b) any consent to be named in the Marketing Documents or any other document;
- (c) any knowledge (actual or constructive) obtained after the date of this Agreement of:
 - (i) any non-compliance by an Offeror with any statutory, NZX or ASX requirement concerning the Offer, or the Marketing Documents;
 - (ii) any failure of an Offeror to perform or observe any of its obligations under this Agreement; or
 - (iii) any inaccuracy in any representation or warranty made or taken to have been made by an Offeror under this Agreement;
- (d) any valid termination by an Underwriter of its obligation to underwrite the Offer under this Agreement; or
- (e) any other fact, matter or thing which might otherwise constitute a waiver of or in any way prejudice or affect any right of an Indemnified Person.

12.9 The Offerors will promptly notify the Lead Managers and Underwriters of any limitation on the extent to which the Offeror may claim against any third party or third parties in connection with the Offer (a **"Relevant Limitation"**).

12.10 Where any damage or loss is suffered by an Offeror for which an Indemnified Person would otherwise be jointly and severally liable with any third party or third parties to the Offeror, the extent to which such loss will be recoverable by the Offeror from the Indemnified Person will:

- (a) be limited so as to be in proportion to the Indemnified Person's contribution to the overall fault for such damage or loss, as agreed between the parties or, in the absence of agreement, as finally determined by a court of competent jurisdiction; and
- (b) be no more than it would have been had any Relevant Limitation not been agreed to by the Offeror.

The degree to which the Lead Managers and Underwriters may rely on the work of any such third party (if any) will be unaffected by any Relevant Limitation. This letter does not grant any Indemnified Person any claim against a third party in respect of the work of that third party.

13. UNDERTAKINGS

13.1 The Offerors will not between the date of this Agreement and settlement on the Settlement Date:

- (a) make any announcement in relation to the Offer or any other matter concerning AFT without first consulting with the Lead Managers and Underwriters (and obtaining the Lead Managers' and Underwriters' prior written approval, in the case of any announcement made prior to (or contemporaneously with) lodgement of the Cleansing Notice in accordance with this Agreement);
- (b) enter into any commitment or arrangement which is or may be material in the context of the Offer or the underwriting; or

- (c) in the case of AFT only, acquire or dispose or agree to acquire or dispose of any substantial assets or business without first consulting with the Lead Managers and Underwriters,

other than as disclosed in the Marketing Documents, by way of announcement to the NZX and ASX before the date of this Agreement or matters disclosed in writing to the Lead Managers and Underwriters before the date of this Agreement.

13.2 During the Specified Period (as defined below), the Offerors will not (and will ensure that no subsidiary will):

- (a) offer for sale, transfer or allot any shares or other equity securities issued by AFT;
- (b) issue or grant any right or option that entitles the holder to call for the issue or transfer of shares in AFT or that is otherwise convertible into, exchangeable for or redeemable by the issue or transfer of, shares or other equity securities in AFT;
- (c) otherwise enter into any agreement whereby any person may be entitled to the allotment and issue or purchase of any shares or other equity securities by AFT; or
- (d) make any announcement of an intention to do any of the foregoing,

other than:

- (e) pursuant to the Offer or SPP;
- (f) with the prior written consent of the Lead Managers and Underwriters (which may not be unreasonably withheld or delayed);
- (g) in the case of AFT, pursuant to any existing employee incentive scheme or dividend reinvestment plan; or
- (h) upon conversion of any redeemable preference shares in AFT on issue at the date of this Agreement.

13.3 The “**Specified Period**” for the purposes of clause 13.2 is:

- (a) in the case of AFT and AF Trust, the period from the date of this Agreement to the date three months after the Settlement Date; and
- (b) in the case of CRG, the period from the date of this Agreement to the date six months after the Settlement Date.

14. NOTICES

14.1 Every notice, acceptance, confirmation, certificate or other communication to be given under, or in connection with, this Agreement will be given in writing by:

- (a) personal delivery; or
- (b) email (which will be deemed to have been received when it arrives in the recipient’s information system),

to the addresses specified below or if a written notice of change of address is given then to the new address:

AFT:	AFT Pharmaceuticals Limited Level 1, 129 Hurstmere Road Takapuna Auckland New Zealand Email: malcom@aftpharm.com Attention: Malcolm Tubby
With a copy to (which will not constitute notice):	Harmos Horton Lusk Limited 48 Shortland Street Auckland Email: tim.mitchelson@hhl.co.nz Attention: Tim Mitchelson
AF Trust:	Hartley Atkinson and Colin McKay as trustees of the Atkinson Family Trust Email: hartley@aftpharm.com Attention: Hartley Atkinson
CRG:	1000 Main Street Suite 2500 Houston, TX 77002 Email: kevin.reilly@crglp.com Attention: Kevin Reilly
With a copy (which will not constitute notice except as contemplated by clause 17.1):	Chapman Tripp 23 Albert Street Auckland Email: Rachel.dunne@chapmantripp.com Attention: Rachel Dunne
FBL and FBGL:	Forsyth Barr Limited and Forsyth Barr Group Limited Level 23, Lumley Centre 88 Shortland Street Auckland Email: james.dykes@forsythbarr.co.nz Attention: James Dykes
BP:	Bell Potter Securities Limited Level 29 101 Collins Street Melbourne Australia Email: dcraike@bellpotter.com.au Attention: Darren Craike

In respect of
FBL, FBGL and
BP, with a copy
to (which will not
constitute
notice):

Russell McVeagh
48 Shortland Street
Auckland
Email: david.raudkivi@russellmcveagh.com
Attention: David Raudkivi

MinterEllison
Level 17, 525 Collins Street
Melbourne VIC 3000
Australia
Email: sudharshan.senathirajah@minterellison.com
Attention: Sudharshan Senathirajah

- 14.2 Notwithstanding any other provision contained in this clause, any notice given on a day which is not a Business Day, or if given after 5.00 pm in the place in which it is received will be deemed to be given at 9.00 am on the next Business Day.
- 14.3 During the period that New Zealand is on any alert level notified by the New Zealand Government in relation to Covid-19, any notice given under this Agreement must be given by email (except to the extent that the notice is required by law to be given by another means, in which case it must also be provided by email).

15. PUBLIC ANNOUNCEMENTS AND CONFIDENTIALITY

- 15.1 Subject to clause 15.2, each party will at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure or use to be made of, any provision of this Agreement or any information relating to any provision, or the subject matter of, this Agreement, or any information directly or indirectly obtained by a party from the other under or in connection with this Agreement, except to the extent:

- (a) required by law or regulation, or any requirement of a regulatory or other competent authority;
- (b) necessary to satisfy the requirements of NZX Listing Rules and ASX Listing Rules;
- (c) that the parties otherwise agree in writing;
- (d) necessary to carry out its obligations under this Agreement;
- (e) that the information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this clause or at law; or
- (f) necessary to provide for usual disclaimers in research material generated by the Lead Managers or Underwriters.

- 15.2 Notwithstanding anything in clause 15.1, following completion of the Offer, the Lead Managers and Underwriters may publically acknowledge their involvement in the Offer (any disclosure being limited to information which has been made publically available by AFT) for the purposes of marketing or positioning.

16. FINAL RESPONSIBILITY OF AFT

- 16.1 Notwithstanding that the Lead Managers and Underwriters, their respective employees and advisers have assisted and will continue to assist in the compilation of material for, and the preparation of, the Marketing Documents, AFT acknowledges and agrees that AFT is and will remain solely and absolutely responsible for ensuring:

- (a) the accuracy, completeness, consistency and materiality of the contents of the Marketing Documents and of any other announcements and disclosures authorised by AFT in connection with the Offer;
- (b) that all notices, reports, announcements, and advertising material published, authorised or instigated by or on behalf of AFT in connection with the Offer, or the Marketing Documents, are not false, deceptive or misleading or likely to mislead or deceive (including by omission) or unsubstantiated (being a statement for which AFT does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated) and comply with all applicable laws and regulations; and
- (c) that it conducts the Offer in accordance with the FMCA, the FMCR, the Takeovers Code, the Corporations Act, the NZX Listing Rules, the ASX Listing Rules and all other applicable laws and regulations.

17. GENERAL

- 17.1 CRG appoints Chapman Tripp as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this Agreement and will ensure that at all times Chapman Tripp or a replacement appointed by CRG and notified to the other parties to this Agreement, is authorised and able to accept service of process and other documents on its behalf in New Zealand.
- 17.2 Each Offeror will be responsible for its own costs and expenses in connection with and incidental to the preparation and carrying into effect of this Agreement and will be responsible for the Lead Managers' and Underwriters' costs and expenses in accordance with the Engagement Letters.
- 17.3 No provision 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 that provision.
- 17.4 In this Agreement, unless the context requires otherwise:
 - (a) the singular includes the plural and vice versa;
 - (b) the headings are for convenience and do not affect interpretation; and
 - (c) references to times and currencies are to New Zealand time and New Zealand dollars respectively.
- 17.5 A party must not assign or purport to assign any of that party's rights under this Agreement without the prior written consent of the other party.
- 17.6 The parties contemplate the execution of this Agreement in counterparts and the delivery by email or PDF copies of the signature pages of such executed counterparts, but agree that receipt by a party of an email or PDF copy of the signature pages of any executed copy will be as binding and effective as receipt of the original thereof.
- 17.7 This Agreement (together with the Engagement Letters) constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral. This Agreement supersedes and prevails over the Engagement Letters to the extent of any inconsistency or duplication. Notwithstanding any other provision of this Agreement, the indemnity in clause 12.2 supersedes and extinguishes all indemnities provided by the AF Trust to the

Indemnified Persons in the Engagement Letter between AF Trust, the Lead Managers and the Underwriters.

- 17.8 For the purposes of the Contract and Commercial Law Act 2017, the indemnity contained in clause 12 of this Agreement is given for the benefit of the Indemnified Persons and is enforceable at the suit of each Indemnified Person (but on the basis that the benefit so conferred, and enforceable, is the benefit of that indemnity as it (and/or any other provision of this Agreement) may be amended from time to time by agreement between the parties to this Agreement) but otherwise the provisions of this Agreement are not intended to benefit any other person.
- 17.9 This Agreement may only be amended by agreement in writing signed by all parties.
- 17.10 The Lead Managers and Underwriters will not have, and will not state or imply that they have, any power or authority to incur obligations or otherwise act on behalf the Offerors except to the extent expressly set out in this Agreement. The obligations of each of the Lead Managers and Underwriters under this Agreement are several (and not joint or joint and several) and no Lead Manager or Underwriter shall be responsible for the obligations of the other.
- 17.11 Time is of the essence for the performance of all obligations in respect of which a time period or date, or both, is specified in this Agreement (including the Timetable).
- 17.12 The Offerors acknowledge and agree that each Lead Manager and Underwriter is acting solely pursuant to a contractual relationship with the Offerors on an arm's length basis and on the terms, and with the obligations and duties expressly stated in this Agreement, and not as a fiduciary to the Offerors or any other person.
- 17.13 Colin McKay has entered into this Agreement solely in his capacity as trustee of the AF Trust and, accordingly, his liability will extend only to the assets which are for the time being the subject of the AF Trust and in the hands of the trustees in the proper course of administration of that trust, except to the extent that he has acted dishonestly or in wilful or negligent breach of the trust.

18. NON-MERGER

- 18.1 The warranties, acknowledgments and indemnities given under or pursuant to this Agreement will not merge on completion of the issue and allocation of the Shares or on allotment or transfer of any Shares to the Subscribers, but will remain in full force and effect on or after the Settlement Date notwithstanding settlement.

19. GOVERNING LAW AND JURISDICTION

- 19.1 This Agreement and all matters arising out of or in connection with it, is governed by, and will be construed in accordance with, the laws of New Zealand, without regard to any conflict of laws principles that would indicate the applicability of the laws of any other jurisdiction.
- 19.2 Each of the parties to this Agreement irrevocably:
- (a) agrees that any legal suit, action or proceeding ("**Actions**") arising out of or based on this Agreement may be instituted in any competent court in New Zealand;
 - (b) waives, to the fullest extent it may effectively do so, any objection which it may now or later have to the laying of venue of those Actions in any such court; and

(c) submits to the non-exclusive jurisdiction of those courts in those Actions.

20. ACCEPTANCE AND CONFIRMATION

20.1 Please confirm the Offerors' mandate to the Lead Managers and Underwriters and acknowledge acceptance of the above terms by counter-signing this Agreement in the space provided below and returning the Agreement.

Yours faithfully

**For and on behalf of
Forsyth Barr Group Limited:**



Authorised Signatory
Name: Neil Paviour-Smith
Position: Managing Director
Date: 10/06/2020

**For and on behalf of
Forsyth Barr Limited:**



Authorised Signatory
Name: Darren Manning
Position: Co-Head of Markets
Date: 10/06/2020

**For and on behalf of
Bell Potter securities limited:**

Authorised Signatory
Name:
Position:
Date:

Yours faithfully

**For and on behalf of
FORSYTH BARR GROUP LIMITED:**

Authorised Signatory

Name:

Position:

Date:

**For and on behalf of
FORSYTH BARR LIMITED:**

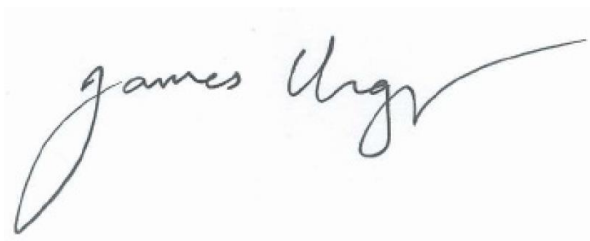
Authorised Signatory

Name:

Position:

Date:

**For and on behalf of
BELL POTTER SECURITIES LIMITED:**

A handwritten signature in black ink, reading "James Unger". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Authorised Signatory

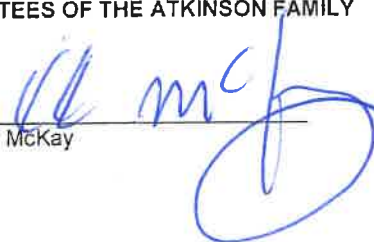
Name: James Unger

Position: Director of Bell Potter Securities &
Head Of Corporate Finance

Date: 10 June 2020

Accepted by
HARTLEY ATKINSON AND COLIN MCKAY AS TRUSTEES OF THE ATKINSON FAMILY
TRUST:


Hartley Atkinson


Colin McKay

Accepted by
CAPITAL ROYALTY PARTNERS II – PARALLEL FUND B (CAYMAN) L.P.



Authorised Signatory
Name: **Nate Hukill**
Position: **Managing Partner**
Date: **June 9, 2020**

Accepted by
CAPITAL ROYALTY PARTNERS II – PARALLEL FUND A L.P.



Authorised Signatory
Name: **Nate Hukill**
Position: **Managing Partner**
Date: **June 9, 2020**

Accepted by
CAPITAL ROYALTY PARTNERS II L.P.



Authorised Signatory
Name: **Nate Hukill**
Position: **Managing Partner**
Date: **June 9, 2020**

Accepted by
CAPITAL ROYALTY PARTNERS II (CAYMAN) L.P.



Authorised Signatory
Name: **Nate Hukill**
Position: **Managing Partner**
Date: **June 9, 2020**

Accepted by
AFT PHARMACEUTICALS LIMITED:



Authorised Signatory

Name: David Flacks

Position: Director

Date: 10 June 2020

SCHEDULE 1 – TIMETABLE

Event	Timing
Bookbuild Date	10 June 2020
Marketing Documents (including Cleansing Notice) released	9:00am (NZ time) 10 June 2020
Trading halt commences	9:00am (NZ time) 10 June 2020
Offer Opening Time	9:30am (NZ time) 10 June 2020
Offer closes, trading halt lifted	9:00am (NZ time) 11 June 2020
Settlement Date	15 June 2020

SCHEDULE 2 – Certificate

To: Forsyth Barr Limited, Forsyth Barr Group Limited and Bell Potter Securities Limited

Copy to: Russell McVeagh

We hereby certify on behalf of AFT Pharmaceuticals Limited ("**AFT**") that except as set out below the following statements are, to the best of our knowledge having made due inquiries of all of the directors of AFT, true and not misleading or deceptive:

- (a) each of the conditions required to be satisfied as at the date of this certificate as set out in clause 10.1 of the Placement and Sell Down Agreement have been satisfied or otherwise waived by the Lead Managers and Underwriters;
- (b) none of the events contemplated by clause 10.4 have occurred, or if any such event depends on a Lead Manager or Underwriter forming an opinion, AFT does not consider that circumstances have arisen as a result of which a Lead Manager or Underwriter could reasonably form that opinion, in each case excluding any condition which the Lead Managers and Underwriters have notified AFT in writing that they waive;

For the purposes of this Certificate:

- (a) "**Placement and Sell Down Agreement**" means the placement and sell down agreement relating to the issue and sale of new and existing Shares dated on or about ____ June 2020 between Forsyth Barr Limited, Forsyth Barr Group Limited, Bell Potter Securities Limited, AFT and others; and
- (b) words and expressions used shall have the meanings ascribed to them in the Placement and Sell Down Agreement.

DATED: June 2020

SIGNED on behalf of **AFT PHARMACEUTICALS LIMITED** by:

Signature of Chief Executive Officer

Signature of Chief Financial Officer