



Execution Version

Scheme Implementation Deed

Apollo Tourism & Leisure Ltd (**ATL**)
Tourism Holdings Rentals Limited ARBN 655 142
028, a foreign company registered in its original
jurisdiction of New Zealand as Tourism Holdings
Limited (**thl**)
THL Group (Australia) Pty. Ltd. (**thl Acquirer**)

Scheme Implementation Deed

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Details

Date 10 December 2021

Parties

Name **Apollo Tourism & Leisure Ltd ACN 614 714 742**
Country of incorporation Australia
ABN 67 614 714 742
Short form name **ATL**
Notice details 698 Nudgee Road, Northgate QLD 4013, Australia
Email: luke@apollocamper.com.au
Attention: Luke Trouchet

Name **Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited**
Country of incorporation New Zealand
Co. No. 248179
NZBN 9429039926081
Short form name **thl**
Notice details Level 1, 83 Beach Street, Auckland City, Auckland 1140, New Zealand
Email: grant.webster@thlonline.com
Attention: Grant Webster

Name **THL Group (Australia) Pty. Ltd. ACN 055 966 222**
Country of incorporation Australia
ABN 68 055 966 222
Short form name **thl Acquirer**
Notice details Level 1, 83 Beach Street, Auckland City, Auckland 1140, New Zealand
Email: grant.webster@thlonline.com
Attention: Grant Webster

Background

- A ATL, *thl* and *thl* Acquirer have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this deed.
- B ATL, *thl* and *thl* Acquirer have agreed certain other matters in connection with the Proposed Transaction as set out in this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

ACCC means the Australian Competition and Consumer Commission.

Acceptable Confidentiality Deed means a confidentiality deed which contains obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of *thl* under the Confidentiality Deed.

Adviser means in relation to an entity:

- (a) a financier to the entity in connection with the Proposed Transaction; or
- (b) a financial, corporate, legal, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Proposed Transaction by the entity.

Announcement means:

- (a) an announcement by ATL in relation to the Proposed Transaction; or
- (b) an announcement by *thl* in relation to the Proposed Transaction,

as the context requires and, in each case, in the form agreed by ATL and *thl* (both acting reasonably), prior to the execution of this deed.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and ATL was the designated body.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market known as the Australian Securities Exchange operated by it.

ASX Admission means the admission of *thl* to the official list (as defined in the ASX Listing Rules) of ASX as an ASX foreign exempt listing and the quotation of *thl* Shares on ASX.

ASX Listing Rules means the official listing rules of ASX as amended from time to time.

ATL Board means the board of directors of ATL (or any committee of the board of directors of ATL constituted to consider the Proposed Transaction on behalf of ATL).

ATL Break Fee has the meaning given to that term in clause 13.3(a).

ATL Data Room means the Project Artemis – ATL data room hosted by Ansarada at the URL address <https://dataroom.ansarada.com/mvc/Dr.Project.Artemis%7C83273/>.

ATL Director means a director of ATL.

ATL Group means ATL and its Subsidiaries. A reference to a member of the **ATL Group** or an **ATL Group Member** is a reference to ATL or any of its Subsidiaries.

ATL Information means information to be included by ATL in the Explanatory Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by the Independent Shareholders as to whether or not to vote in favour of the Scheme (including any supplementary disclosure in respect of the Scheme), being information that is within the knowledge of the ATL Board and has not previously been disclosed to Independent Shareholders but does not include the *thl* Information, the Independent Expert's Report, the Investigating Accountant's Report and any report or opinion prepared by an

accounting firm in relation to the potential taxation consequences of the Scheme on Scheme Shareholders to be included in, or to accompany, the Explanatory Booklet.

ATL Material Adverse Change means a change, event, circumstance or occurrence (singularly or in combination) which results in or has the effect of (or which with the lapse of time is reasonably likely to result in or have the effect of):

- (a) resulting in the average price for ex-rental vehicles sold by the ATL Group during any two calendar month period ending on the last day of a calendar month between the date of this deed and the Second Court Date in any of:
 - (i) Australia;
 - (ii) New Zealand; or
 - (iii) Canada,being:
 - (iv) 15% or more below the average price for ex-rental vehicles sold by the ATL Group in any relevant region (referred to in paragraphs (i) to (iii) above) over the six calendar month period ending on 30 November 2021; or
 - (v) 10% or more below the average price for ex-rental vehicles sold by the ATL Group in all regions (referred to in paragraphs (i) to (iii) above) over the six calendar month period ending on 30 November 2021;
- (b) materially impacting in an adverse manner on the Financial Indebtedness or debt arrangements of the ATL Group, including where a demand is made for repayment of any Financial Indebtedness or the Financial Indebtedness becomes repayable in advance of its maturity;
- (c) the business of the ATL Group being unable to be carried on in substantially the same manner as it is carried on at the date of this deed, including as a result of an adverse effect on the status or terms of any licences, permits or authorisations from any Governmental Agency applicable to ATL; or
- (d) materially impacting the reputation of the ATL Group, including in relation to its good standing with any Governmental Agency having jurisdiction over the conduct of business of the ATL Group (including any regulatory investigation, legal proceeding or class action), other than an event, circumstance or occurrence:

- (a) required to be done or procured by ATL under this deed or the Scheme or the transactions contemplated by either;
- (b) to the extent that:
 - (i) it was Fairly Disclosed in the Due Diligence Material (or which ought reasonable to have been expected to arise from a matter, event or circumstance which was so disclosed);
 - (ii) it was consented to in writing by *thi* (in its absolute discretion);
 - (iii) it was Fairly Disclosed in documents that were publicly available prior to the date which is 2 Business Days prior to the date of this deed from public filings of ATL with ASX or ASIC;
 - (iv) it results from a change in generally applicable accounting standards or principles;
 - (v) it results from a change in any applicable law or policy required by law or general economic, political or regulatory conditions in Australia, New Zealand, Canada or the United Kingdom or that otherwise affects or otherwise has an impact on Australia, New Zealand, Canada or the United Kingdom; or
 - (vi) it results from any acts of war or terrorism, natural disaster or pandemic (including COVID-19), or any escalation of the same, affecting businesses like those operated by ATL generally.

ATL Parties means each member of the ATL Group and their respective Authorised Persons.

ATL Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed:

- (a) ATL converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the ATL Group resolves to reduce its share capital in any way;
- (c) any member of the ATL Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the ATL Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option;
- (e) any member of the ATL Group issues, or agrees to issue, convertible notes;
- (f) other than in the ordinary course of business of the ATL Group (as determined by reference to the course of business during the 12 months prior to the date of this deed), any member of the ATL Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property where that business or property represents more than 10% of the equity value of the ATL Group;
- (g) any member of the ATL Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to any member of the ATL Group;
- (i) ATL pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution;
- (j) any member of the ATL Group makes any change to its constitution or convenes a meeting to consider a resolution to change a constitution of any member of the ATL Group;
- (k) any member of the ATL Group ceases, or threatens to cease to, carry on the business conducted as at the date of this deed;
- (l) any member of the ATL Group (other than a dormant, non-operating member of the ATL Group) being deregistered as a company or being otherwise dissolved;
- (m) any disposal of shares or securities by a member of the ATL Group in any member of the ATL Group other than to a member of the ATL Group; or
- (n) any member of the ATL Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (m) inclusive above insofar as it applies to the member of the ATL Group the subject of such direct or indirect authorisation, commitment, agreement or announcement,

provided that an ATL Prescribed Occurrence will not include any matter:

- (o) required to be done or procured by the ATL Group under this deed or the Scheme;
- (p) required by law or by an order of a court or Governmental Agency;
- (q) to the extent it is Fairly Disclosed in filings of ATL with the ASX in the 24 months prior to the date of this deed;
- (r) to the extent it is Fairly Disclosed in the Due Diligence Material; or
- (s) the undertaking of which *thl* has previously approved in writing.

ATL Register means the register of shareholders maintained by ATL under section 168(1) of the Corporations Act.

ATL Related Person means, in respect of ATL:

- (a) a Related Body Corporate of ATL; and
- (b) any director, officer, member or employee of ATL or of a Related Body Corporate of ATL.

ATL Share means an issued fully paid ordinary share in the capital of ATL.

ATL Shareholder means a person who is registered in ATL Register as a holder of one or more ATL Shares.

ATL Significant Approval Matter means a decision, initiative or other matter relating to the ATL Group that requires the prior approval of the ATL Board or the managing director of ATL under the delegated authority framework for the ATL Group Fairly Disclosed as part of the Due Diligence Material prior to the date of this deed.

ATL Warranties means the representations and warranties of ATL set out in clause 9.4.

AU Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

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

Authorised Person means, in respect of a person:

- (c) a director, officer or employee of the person;
- (d) an Adviser of the person; and
- (e) a director, officer or employee of an Adviser of the person.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Brisbane, Queensland, Australia or Auckland, New Zealand.

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

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Cleansing Notice Date means the date on which the Explanatory Booklet is despatched.

Commerce Commission means the New Zealand Commerce Commission.

Companies Act means *Companies Act 1993* (NZ).

Competing Proposal means any offer, proposal or expression of interest, transaction or arrangement (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed substantially in accordance with its terms, a person or two or more persons who are Associates (other than a member of the *thi* Group) would directly or indirectly:

- (a) acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the ATL Shares or of the share capital of any material ATL Group Member;
- (b) acquire control of ATL, within the meaning of section 50AA of the Corporations Act;
- (c) acquire, obtain a right to acquire, or otherwise obtain an economic interest in, 20% or more by value of the business or property of ATL or any member of the ATL Group (based on the value of the ATL Group's total consolidated assets as at 30 June 2021);
- (d) acquire or merge with ATL or amalgamate with any member of ATL Group, or acquire a significant shareholding or economic interest in ATL or any member of ATL Group or 20% or more by value of the total assets or business of any member of ATL Group;

- (e) result in ATL ceasing to be admitted to the official list of ASX or the ATL Shares ceasing to be officially quoted on the market operated by ASX (except in circumstances where such cessation is as a result of the implementation of the Scheme); or
- (f) require ATL to abandon, or otherwise fail to proceed with, the Proposed Transaction,

whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for ATL or other synthetic merger or any other transaction or arrangement. Each successive material modification or variation of a Competing Proposal will constitute a new Competing Proposal.

Conditions means the conditions set out in clauses 3.1 and **Condition** means any one of them.

Confidentiality Deed means the Mutual Confidentiality Agreement between *thl* and ATL dated 11 June 2021.

Control means with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise and **Controlled** has a corresponding meaning.

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

Counter Proposal has the meaning given to that term in clause 14.8(b).

Court means the Supreme Court of Queensland or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Cut Off Date has the meaning given to that term in clause 14.8(b).

Deed Poll means the deed poll to be executed by *thl* and *thl* Acquirer prior to the First Court Date in relation to the Scheme, in the form set out in Schedule 3 or in such other form as is acceptable to ATL acting reasonably.

Delivery Time means, in relation to the Second Court Date, two hours before the commencement of the hearing or, if the commencement of the hearing is adjourned, two hours before the commencement of the adjourned hearing, of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.

Due Diligence Material means the written information disclosed by or on behalf of ATL and its Subsidiaries (including any management presentations and all written responses provided in response to written questions or requests for information) to *thl*, or any of its Authorised Persons prior to the date of this deed in the ATL Data Room, as evidenced by the documents in the ATL Data Room as at 11.59pm, on the day immediately preceding the date of this deed.

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

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

End Date means:

- (a) 29 April 2022, unless the only Conditions that must still be satisfied or waived prior to the Second Court Date on that date are one or more of the Conditions in clauses 3.1(a)(ii) (ACCC), 3.1(a)(iii) (Commerce Commission) and 3.1(a)(iv) (FIRB) in which case it is 30 June 2022; or
- (b) such other date and time agreed in writing between *thl* and ATL.

Exclusivity Period means the period commencing on the date of this deed and ending on the earliest of:

- (a) the End Date;
- (b) the Effective Date of the Scheme; and
- (c) the date this deed is terminated in accordance with its terms.

Explanatory Booklet means the explanatory booklet to be prepared by ATL in respect of the Proposed Transaction in accordance with the terms of this deed and to be dispatched to Independent Shareholders.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

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

- (a) borrowing from any bank or other financial institution;
- (b) bill, bond, debenture, note or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;
- (d) guarantee;
- (e) finance or capital lease;
- (f) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;
- (g) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (h) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of the ATL Group; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

Financial Reporting Act means the *Financial Reporting Act 2013* (NZ).

FIRB means the Australian Foreign Investment Review Board.

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

FMCR means the *Financial Markets Conduct Regulations 2014* (NZ).

Foreign Scheme Shareholder means a Scheme Shareholder whose address as shown in the ATL Register (as at the Scheme Record Date) is located outside of:

- (a) Australia and its external territories;
- (b) New Zealand;
- (c) United Kingdom; and
- (d) any other jurisdictions as may be agreed in writing by ATL and *thl*,

unless *thl* determines (in its absolute discretion), that *thl* is permitted to allot and issue *thl* Consideration Shares to that Scheme Shareholder by the laws of that place either unconditionally or after compliance with conditions that *thl* considers are not unduly onerous or impracticable.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, FIRB, ACCC, Australian Takeovers Panel, Financial Markets Authority, NZX, Commerce Commission, NZ Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

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

Implementation Date means, with respect to the Scheme, the later of:

- (a) the fifth Business Day following the Scheme Record Date (as relevant); and
- (b) such other Business Day as the parties agree.

Independent Expert means an expert, independent of the parties, engaged by ATL in good faith to prepare the Independent Expert's Report.

Independent Expert's Report means the report from the Independent Expert commissioned by ATL for inclusion in the Explanatory Booklet, which includes a statement or opinion from the Independent Expert on whether the Scheme is in the best interests of ATL Shareholders and includes any update of that report by the Independent Expert.

Independent Shareholders means all ATL Shareholder except for the *thl* Entities.

Insolvency Event means in relation to a person:

- (a) **insolvency official**: the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements**: the entry by the person into a scheme of arrangement (other than the Scheme) or composition with its creditors or takes similar actions as a result of which the entity's assets are, or are proposed to be, submitted to the control of its creditors;
- (c) **winding up**: the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments**: the person suspends or threatens to suspend payment of its debts as and when they become due on the basis that it is unable to pay its debts or being or becoming otherwise insolvent;
- (e) **ceasing business**: the person ceases or threatens to cease to carry on all or a substantial part of its business;
- (f) **insolvency**: the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **deregistration**: the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement**: the person executing a deed of company arrangement;
- (i) **person as trustee or partner**: the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **analogous events**: anything analogous to those set out in any of paragraphs (a) to (i) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

Interest Rate means the Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

Investigating Accountant means the accounting firm appointed by ATL to prepare the Investigating Accountant's Report.

Investigating Accountant's Report means the report to be prepared by the Investigating Accountant in relation to the pro forma financial information regarding the Merged Group from information provided by ATL and *thl* for inclusion in the Explanatory Booklet.

Material Contracts means the contracts identified as material contracts as agreed in writing by the parties on or before the date of this deed.

Merged Group means the *thl* Group including the ATL Group following implementation of the Scheme.

NZ Accounting Standards means:

- (a) accounting standards approved under the Companies Act and the Financial Reporting Act and their requirements about the preparation and contents of accounts; and
- (b) generally accepted accounting principles, policies, practices and procedures in New Zealand.

NZ Takeovers Panel means the Takeovers Panel established by section 5(1) of the *Takeovers Act 1993* (NZ).

NZX means, where the context requires, NZX Limited (Co. No. 1266120) or NZX Regulation Limited (Co. No. 8072017) and, where the context requires, the main board financial market that these entities operate.

NZX Listing Rules means the NZX Listing Rules for the NZX Main Board.

Proposed Transaction means:

- (a) the proposed acquisition by *thl* in accordance with the terms and conditions of this deed, of all of the ATL Shares from the Scheme Shareholders through the implementation of the Scheme; and
- (b) all associated transactions and steps contemplated by this deed.

Refinancing Agreement has the meaning given in clause 3.1(l).

Regulatory Approvals means the approvals set out in clause 3.1(a).

Related Body Corporate of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Interest has the meaning given in the Corporations Act.

Relevant Notice has the meaning given to that term in clause 14.8(a)(iv)(A).

RG 60 means Regulatory Guide 60 issued by ASIC in September 2020.

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between ATL and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 2 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by ATL and *thl*, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by each party.

Scheme Consideration means 1 *thl* Consideration Share per 3.680818 Scheme Shares.

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

Scheme Record Date means, in respect of the Scheme, 7.00pm on the second Business Day (or such other Business Day as *thl* and ATL in writing) following the Effective Date.

Scheme Share means an ATL Share on issue as at the Scheme Record Date, other than an ATL Share held by a *thl* Entity.

Scheme Shareholder means a person who holds one or more Scheme Shares.

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

Senior Manager means the managing director and chief executive officer, the chief financial officer and any executive director of ATL.

Share Splitting means the splitting by a holder of ATL Shares into two or more parcels of ATL Shares whether or not it results in any change in beneficial ownership of the ATL Shares.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which in the determination of the ATL Board acting in good faith in order to satisfy what the ATL Board considers to be its fiduciary or statutory duties (after having taken advice from their legal and financial advisers):

- (a) is reasonably capable of being completed in accordance with its terms, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to ATL Shareholders as a whole than the Proposed Transaction, taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty and timing.

Tax means any tax, levy, charge, impost, fee, deduction, offset (including research and development tax offsets), goods and services tax, payroll tax, superannuation guarantee, fringe benefits tax, compulsory loan, PAYG instalment and withholding, that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes stamp duty or any duties of a similar nature.

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

thl Board means the board of directors of *thl* (or any committee of the board of directors of *thl* constituted to consider the Proposed Transaction on behalf of *thl*).

thl Break Fee has the meaning given to that term in clause 13.4.

thl Consideration Share means a *thl* Share to be issued under the terms of the Scheme as Scheme Consideration.

thl Data Room means the Project Artemis – THL data room hosted by Ansarada at the URL address https://dataroom.ansarada.com/_mvc/de9rdoagu9%7C78910/4353936/spa/documents.

thl Due Diligence Material means the written information disclosed by or on behalf of *thl* and its Subsidiaries (including any management presentations and all written responses provided to written questions or requests for information) to ATL, or any of its Authorised Persons prior to the date of this deed in the *thl* Data Room, as evidenced by the documents in the *thl* Data Room as at 11.59pm, on the day immediately preceding the date of this deed.

thl Entities means:

- (a) *thl*; and
- (b) any other entity that is Controlled by *thl* that holds ATL Shares.

thl Group means *thl* and each of its Subsidiaries (excluding, at any time, ATL and its Subsidiaries to the extent that ATL and its Subsidiaries are Subsidiaries of *thl* at that time). A reference to a member of the *thl* Group or a *thl* Group Member is a reference to *thl* or any such Subsidiary.

th/Information means such information regarding the **th/** Group and the Merged Group that is provided by or on behalf of **th/**, or any of their Advisers, to ATL, the Investigating Accountant and the Independent Expert:

- (a) to enable the Explanatory Booklet (or any supplementary disclosure in respect of the Scheme) to be prepared and completed in compliance with all applicable laws and regulations;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with **th/**'s obligations under clause 6.2(a),

but does not include the ATL Information (or any information provided by or on behalf of ATL contained, or used, in the preparation of information on the Merged Group), the Independent Expert's Report, the Investigating Accountant's Report and any report or opinion prepared by an accounting firm in relation to the potential taxation consequences of the Scheme on Scheme Shareholders to be included in, or to accompany, the Explanatory Booklet.

th/ Material Adverse Change means a change, event, circumstance or occurrence (singularly or in combination) which results in or has the effect of (or which with the lapse of time is reasonably likely to result in or have the effect of):

- (a) resulting in the average price for ex-rental vehicles sold by the **th/** Group during any two calendar month period ending on the last day of a calendar month between the date of this deed and the Second Court Date in any of:
 - (i) Australia;
 - (ii) New Zealand; or
 - (iii) United States of America,being:
 - (iv) 15% or more below the average price for ex-rental vehicles sold by the **th/** Group in any relevant region (referred to in paragraphs (i) to (iii) above) over the six calendar month period ending on 30 November 2021; or
 - (v) 10% or more below the average price for ex-rental vehicles sold by the **th/** Group in all regions (referred to in paragraphs (i) to (iii) above) over the six calendar month period ending on 30 November 2021;
- (b) materially impacting in an adverse manner on the Financial Indebtedness or debt arrangements of the **th/** Group, including where a demand is made for repayment of any Financial Indebtedness or the Financial Indebtedness becomes repayable in advance of its maturity;
- (c) the business of the **th/** Group being unable to be carried on in substantially the same manner as it is carried on at the date of this deed, including as a result of an adverse effect on the status or terms of any licences, permits or authorisations from any Governmental Agency applicable to **th/**; or
- (d) materially impacting the reputation of the **th/** Group, including in relation to its good standing with any Governmental Agency having jurisdiction over the conduct of business of the **th/** Group (including any regulatory investigation, legal proceeding or class action),

other than an event, circumstance or occurrence:

- (a) required to be done or procured by **th/** under this deed or the Scheme;
- (b) to the extent that:
 - (i) it was Fairly Disclosed in the **th/** Due Diligence Material (or which ought reasonable to have been expected to arise from a matter, event or circumstance which was so disclosed);
 - (ii) it was consented to in writing by ATL (in its absolute discretion);

- (iii) it was Fairly Disclosed in documents that were publicly available prior to the date which is 2 Business Days prior to the date of this deed from public filings of **thl** with the NZX;
- (iv) it results from a change in generally applicable accounting standards or principles;
- (v) it results from a change in any applicable law or policy required by law or general economic, political or regulatory conditions in Australia, New Zealand, the United Kingdom or the United States of America or that otherwise affects or otherwise has an impact on Australia, New Zealand, the United Kingdom or the United States of America; or
- (vi) it results from any acts of war or terrorism, natural disaster or pandemic (including COVID-19), or any escalation of the same, affecting businesses like those operated by the **thl** Group generally.

thl Parties means the members of the **thl** Group and their respective Authorised Persons.

thl Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed:

- (a) **thl** converts all or any of its shares into a larger or smaller number of shares;
- (b) **thl** resolves to reduce its share capital in any way;
- (c) **thl**:
 - (i) enters into a buy-back agreement in relation to its shares; or
 - (ii) resolves to approve the terms of a buy-back agreement in relation to its shares;
- (d) any member of the **thl** Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option other than:
 - (i) under the valid exercise of an option or performance right on issue immediately before the date of this deed; or
 - (ii) an issue or grant of a security or a performance right under an employee incentive scheme in place as the date of this deed, where the occurrence of such issue or grant has been Fairly Disclosed in the **thl** Due Diligence Material;
- (e) any member of the **thl** Group issues, or agrees to issue, convertible notes;
- (f) other than in the ordinary course of business of the **thl** Group (as determined by reference to the course of business during the 12 months prior to the date of this deed), any member of the **thl** Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property where that business or property represents more than 10% of the equity value of the **thl** Group;
- (g) any member of the **thl** Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to any member of the **thl** Group;
- (i) **thl** pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution;
- (j) any member of the **thl** Group makes any change to its constitution or convenes a meeting to consider a resolution to change a constitution of any member of the **thl** Group;
- (k) any member of the **thl** Group ceases, or threatens to cease to, carry on the business conducted as at the date of this deed;
- (l) any member of the **thl** Group (other than a dormant, non-operating member of the **thl** Group) being deregistered as a company or being otherwise dissolved;
- (m) any disposal of shares or securities by a member of the **thl** Group in any member of the **thl** Group other than to a member of the **thl** Group; or

- (n) any member of the *thl* Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (m) inclusive above insofar as it applies to the member of the *thl* Group the subject of such direct or indirect authorisation, commitment, agreement or announcement,

provided that a *thl* Prescribed Occurrence will not include any matter:

- (o) required to be done or procured by the *thl* Group under this deed or the Scheme;
- (p) required by law or by an order of a court or Governmental Agency;
- (q) to the extent it is Fairly Disclosed in filings of *thl* with NZX in the 24 months prior to the date of this deed;
- (r) to the extent it is Fairly Disclosed in the *thl* Due Diligence Material; or
- (s) the undertaking of which ATL has previously approved in writing.

***thl* Share** means an issued fully paid ordinary share in the capital of *thl*.

***thl* Significant Approval Matter** means a decision, initiative or other matter relating to the *thl* Group that requires the prior approval of the *thl* Board or the chief executive officer of *thl* under the delegated authority framework for the *thl* Group Fairly Disclosed as part of the Due Diligence Material prior to the date of this deed.

***thl* Warranties** means the representations and warranties of *thl* set out in clause 9.1.

Timetable means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the parties.

Trouchet Shareholders means Eastglo Pty Ltd as trustee for the Trouchet Super Fund, Barmil Enterprises Pty Ltd as trustee for Lurk Investment Trust, KRLG Pty Ltd as trustee for the KL Trust and any other person or entity holding Scheme Shares for or on behalf of Luke Trouchet or Karl Trouchet.

1.2 Interpretation

In this deed, except where the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to **NZ\$, \$NZ, NZD\$** or **NZD** is to New Zealand currency;
- (h) a reference to time is to Brisbane, Queensland, Australia time;
- (i) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (l) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act unless it is otherwise defined in this deed;

- (m) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (n) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) a reference to **Fairly Disclosed** means disclosed to a party or any of their respective Authorised Persons to a sufficient extent and in sufficient detail so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction to identify the nature and scope of the relevant matter, event or circumstance.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Consents or approvals

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless provided otherwise.

1.6 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.7 Reasonable endeavours

Any provision of this deed which requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
 - (b) to commence any legal action or proceeding against any person,
- except where that provision specifies otherwise.

2. Agreement to propose and implement Scheme

2.1 ATL to propose Scheme

ATL agrees to propose the Scheme on and subject to the terms and conditions of this deed, and substantially in accordance with the Timetable.

2.2 *thl* Acquirer to acquire Scheme Shares

The parties agree that *thl* Acquirer will acquire the Scheme Shares under the Scheme and that *thl* Acquirer will procure the provision by *thl* of (and *thl* will provide at the request of *thl* Acquirer) the Scheme Consideration in the manner and amount contemplated by this deed and the terms of

the Scheme. The parties must procure that the Scheme Shares transferred under the Scheme are transferred to *thl* Acquirer.

2.3 Agreement to implement Scheme

The parties agree to implement the Scheme on and subject to the terms and conditions of this deed, and substantially in accordance with the Timetable.

2.4 Delivery of information

- (a) ATL must provide a USB evidencing the contents of the ATL Data Room, or a link from which the contents of the ATL Data Room can be downloaded, to *thl* as soon reasonably practicable following the execution of this deed.
- (b) *thl* must provide a USB evidencing the contents of the *thl* Data Room, or a link from which the contents of the *thl* Data Room can be downloaded, to ATL as soon reasonably practicable following the execution of this deed.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals):**
 - (i) **(ASIC, ASX, NZ Takeovers Panel and NZX)** before the Delivery Time on the Second Court Date, ASIC, ASX, NZ Takeovers Panel and NZX issue or provide such consents, approvals or waivers as are necessary or which ATL and *thl* agree are necessary or desirable to implement the Scheme and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
 - (ii) **(ACCC)** before the Delivery Time on the Second Court Date:
 - (A) *thl* has received notification from the ACCC that:
 - (I) based on the information before it, the ACCC does not propose to intervene in the Proposed Transaction pursuant to section 50 of the CCA (whether or not the notification also states that the ACCC reserves its position if other material information emerges); or
 - (II) based on the information provided to the ACCC and the acceptance by the ACCC of written undertakings (pursuant to section 87B of the CCA) provided or agreed to be provided to the ACCC, the ACCC does not propose to intervene in the Proposed Transaction pursuant to section 50 of the CCA (whether or not the notification also states that the ACCC reserves its position if other material information emerges);
 - (B) the ACCC, or the Australian Competition Tribunal (**Tribunal**) on review of an ACCC decision, has granted authorisation of the Proposed Transaction under Part VII of the CCA either unconditionally or on terms and conditions that are acceptable to *thl* and ATL acting reasonably, and no application to the Federal Court of Australia has been made for judicial review of the decision of the ACCC or the Tribunal within the prescribed period; or
 - (C) the Federal Court of Australia declares or makes orders that the Proposed Transaction will not contravene section 50 of the CCA or *thl* successfully defends proceedings in the Federal Court of Australia alleging that the Proposed Transaction contravenes section 50 of the CCA (and, in either

case, the declaration or decision of the Federal Court of Australia has been finally determined);

- (iii) **(Commerce Commission)** before the Delivery Time on the Second Court Date, *thl* has received from the Commerce Commission, either unconditionally or on terms and conditions that are acceptable to *thl* and ATL acting reasonably:
 - (A) a notice in writing under section 66 of the *Commerce Act 1986* (NZ) giving clearance for the Proposed Transaction; or
 - (B) in response to *thl* filing an informal notification to the Commerce Commission, notice that the Commerce Commission has no objection to, and does not intend to take any action to prevent or oppose, the Proposed Transaction;
 - (iv) **(FIRB)** Before the Delivery Time on the Second Court Date, either:
 - (A) *thl* has received a written notice under FATA from the Treasurer (or his delegate) stating that, or to the effect that, the Commonwealth of Australia does not object to the Proposed Transaction, either without conditions or on terms that are acceptable to *thl* and ATL (acting reasonably); or
 - (B) following notice of the Proposed Transaction having been given by *thl* to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part 3 of FATA;
 - (v) **(ASX Admission)** Before the Delivery Time on the Second Court Date, *thl* has received approval from ASX for ASX Admission, subject only to customary conditions, the Scheme becoming Effective and any other conditions acceptable to the parties (acting reasonably); and
 - (vi) **(Other Governmental Authorities)** before the Delivery Time on the Second Court Date, each other relevant Governmental Agency other than ASIC, ASX, NZ Takeovers Panel, NZX, ACCC, Commerce Commission and FIRB (if any) issue or provide such consents, waivers or approvals which both *thl* and ATL consider are necessary or desirable to implement the Scheme (noting that if such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to the parties (each acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
- (b) **(No ATL Prescribed Occurrence)** no ATL Prescribed Occurrence occurs between the date of this deed and the Delivery Time on the Second Court Date;
 - (c) **(No *thl* Prescribed Occurrence)** no *thl* Prescribed Occurrence occurs between the date of this deed and the Delivery Time on the Second Court Date;
 - (d) **(ATL Warranties)** the ATL Warranties being true and correct in all material respects on the date of this deed and at the Delivery Time on the Second Court Date;
 - (e) **(*thl* Warranties)** the *thl* Warranties being true and correct in all material respects on the date of this deed and at the Delivery Time on the Second Court Date;
 - (f) **(No ATL Material Adverse Change)** no ATL Material Adverse Change occurs between the date of this deed and the Delivery Time on the Second Court Date;
 - (g) **(No *thl* Material Adverse Change)** no *thl* Material Adverse Change occurs between the date of this deed and the Delivery Time on the Second Court Date;
 - (h) **(No restraining orders)** no judgment, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Governmental Agency of competent jurisdiction in Australia or New Zealand remains in effect as at the Delivery Time on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Scheme;
 - (i) **(Third party consents – Material Contracts)** all consents, approvals or waivers of rights by parties other than ATL under any Material Contracts which are necessary or desirable

in the reasonable opinion of **thl** are obtained in a form and subject to conditions acceptable to **thl** and ATL (acting reasonably), and such consents, approvals or waivers have not been withdrawn, cancelled or revoked before the Delivery Time on the Second Court Date;

- (j) (**Trouchet escrow arrangements**) Unless it is indicated by the Court when hearing an application for an order under section 411(1) of the Corporations Act directing ATL to convene the Scheme Meeting that such arrangements would mean the Trouchet Shareholders will be a separate class for the purposes of the Scheme, the entry by the Trouchet Shareholders into arrangements with **thl** on terms and conditions acceptable to **thl** and ATL (acting reasonably) documented in a deed under which:
 - (i) 90% of the **thl** Consideration Shares received by them will be escrowed for 12 months after the Implementation Date; and
 - (ii) 50% of the **thl** Consideration Shares received by them on implementation of the Scheme will be escrowed for 24 months after the Implementation Date;
- (k) (**Independent Expert's Report**) The Independent Expert issues the Independent Expert's Report, which concludes that the Scheme is in the best interests of the Independent Shareholders and the Independent Expert does not change, withdraw or qualify its conclusion in any written update to its Independent Expert's Report or withdraw the Independent Expert's Report prior to the Delivery Time on the Second Court Date;
- (l) (**Refinancing**) the **thl** Group entering into an agreement with new or existing financiers, and obtaining all necessary approvals in respect of the entry into that agreement, to refinance either its existing debt facilities or the debt facilities of all or part of the Merged Group on and with effect from the Implementation Date on terms and conditions that are acceptable to **thl** and ATL (acting reasonably) (**Refinancing Agreement**), and all conditions to drawdown under the Refinancing Agreement (other than the Scheme becoming Effective) have either been satisfied or waived prior to the Delivery Time on the Second Court Date or **thl** and ATL are satisfied (acting reasonably) that any remaining conditions will be satisfied on or prior to the Implementation Date;
- (m) (**Consent from ATL financiers or refinancing**) all consents, approvals, confirmations, agreements or waivers of rights from any financier of the ATL Group (except as agreed in writing between the parties or to the extent arrangements with those financiers are addressed by the terms of the Refinancing Agreement) which are in the opinion of ATL or **thl** necessary or desirable in connection with (i) the Proposed Transaction or (ii) the ongoing funding of the Merged Group following the implementation of the Proposed Transaction are obtained in a form and subject to conditions acceptable to **thl** and ATL, and such consents, approvals, confirmations or waivers have not been withdrawn, cancelled or revoked nor have any condition to such consents, approvals, confirmations or waivers become incapable of being satisfied before the Delivery Time on the Second Court Date;
- (n) (**Shareholder approval**) the Scheme is approved by the Independent Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (o) (**Court approval**) the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);
- (p) (**Order lodged with ASIC**) An office copy of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act is lodged with ASIC; and
- (q) (**D&O insurance**) **thl** obtaining, before the Delivery Time on the Second Court Date, confirmation from its insurers that **thl's** existing Directors and Officers insurance policy is extended to include the Scheme. **thl** confirms that its existing insurers have confirmed that, in principle, they can provide that confirmation subject to receiving updated underwriting information with respect to the Scheme and approving final terms for that insurance.

3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (Regulatory Approvals), 3.1(h) (No restraining orders), 3.1(k) (Independent Expert's Report), 3.1(l) (Refinancing) and 3.1(m) (Consent from ATL financiers or refinancing) are for the benefit of each party and any breach or non-fulfilment of it may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.1(b) (No ATL Prescribed Occurrences), 3.1(d) (ATL Warranties), 3.1(f) (No ATL Material Adverse Change), 3.1(i) (Third party consents – Material Contracts), 3.1(j) (Trouchet escrow arrangements) and 3.1(q) (D&O Insurance) are for the sole benefit of **thl** and any breach or non-fulfilment of them may only be waived by **thl** giving its written consent.
- (c) The Conditions in clauses 3.1(c) (No **thl** Prescribed Occurrences), 3.1(e) (**thl** Warranties), and 3.1(g) (no **thl** Material Adverse Change) are for the sole benefit of ATL and any breach or non-fulfilment of them may only be waived by ATL giving its written consent.
- (d) A party entitled to waive a Condition under this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the Delivery Time on the Second Court Date. The Conditions in clauses 3.1(n) (Shareholder approval), 3.1(o) (Court approval) and 3.1(p) (Order lodged with ASIC) are for the benefit of both **thl** and ATL but cannot be waived.
- (e) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other parties for any breach of this deed including a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Reasonable endeavours

- (a) ATL and **thl** will use their respective reasonable endeavours to procure that each of the Conditions for which they are responsible is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require). The Conditions for which each of ATL and **thl** are responsible for the purposes of this clause are:
 - (i) ATL – the Conditions in clauses 3.1(b) (No ATL Prescribed Occurrences), 3.1(d) (ATL Warranties) and 3.1(f) (No ATL Material Adverse Change), 3.1(i) (Third party consents – Material Contracts), 3.1(j) (Trouchet escrow arrangements), 3.1(k) (Independent Expert's Report), 3.1(m) (Consent from ATL financiers or refinancing), 3.1(n) (Shareholder Approval), 3.1(o) (Court approval) and 3.1(p) (Order lodged with ASIC);
 - (ii) **thl** – the Conditions in clauses 3.1(a)(ii) (ACCC), 3.1(a)(iii) (Commerce Commission), 3.1(a)(iv) (FIRB), 3.1(a)(v) (ASX Admission), 3.1(c) (No **thl** Prescribed Occurrences), 3.1(e) (**thl** Warranties) and 3.1(g) (no **thl** Material Adverse Change), 3.1(l) (Refinancing) and 3.1(q) (D&O Insurance); and
 - (iii) ATL and **thl** – the Conditions in clauses 3.1(a)(i) (ASIC, ASX, NZ Takeovers Panel and NZX), 3.1(a)(vi) (Other Governmental Authorities) and 3.1(h) (No restraining orders).
- (b) Without limiting clauses 3.4 and 3.5 below, each of ATL and **thl** must:
 - (i) consult and co-operate fully with the other party in relation to the satisfaction of the Conditions, including in relation to all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (ii) promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals and all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (iii) take all the steps for which it is responsible as part of the Regulatory Approvals process;

- (iv) respond to all requests for information in respect of the applications for Regulatory Approvals as soon as reasonably practicable;
- (v) provide the other party with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals; and
- (vi) so far as it is reasonable to do so, allow the other party and its Authorised Persons the opportunity to be present and make submissions at any meetings with any regulatory body relating to the Regulatory Approvals in respect of the Scheme,

provided that:

- (vii) the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant; and
- (viii) neither party is required to consent to the disclosure by the other party of materially commercially sensitive information of the first mentioned party to any Governmental Agency.

3.4 Notifications

Each of *thl* and ATL must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other party in writing if it becomes aware that any Condition has been satisfied, in which case the notifying party must provide reasonably evidence to the other party that the Condition has been satisfied if requested by the other party; and
- (c) promptly notify the other party in writing if it becomes aware that any Condition is or has become incapable of being satisfied in accordance with its terms (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

At or promptly after the Delivery Time on the Second Court Date, in respect of the Scheme:

- (a) *thl* and ATL will provide a joint certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a)(i) (ASIC, ASX, NZ Takeovers Panel and NZX), 3.1(a)(vi) (Other Governmental Authorities), 3.1(h) (No restraining orders), 3.1(l) (Refinancing) and 3.1(m) (Consent from ATL financiers or refinancing) have been satisfied or waived in accordance with the terms of this deed;
- (b) ATL will provide a certificate to the Court confirming whether or not the Conditions set out in 3.1(b) (No ATL Prescribed Occurrence), 3.1(d) (ATL Warranties), 3.1(f) (No ATL Material Adverse Change), 3.1(i) (Third party consents – Material Contracts), 3.1(k) (Independent Expert's Report) and 3.1(n) (Shareholder Approval) have been satisfied or waived in accordance with the terms of this deed;
- (c) *thl* will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a)(ii) (ACCC), 3.1(a)(iii) (Commerce Commission), 3.1(a)(iv) (FIRB), 3.1(a)(v) (ASX Admission), 3.1(c) (No *thl* Prescribed Occurrence), 3.1(e) (*thl* Warranties), 3.1(g) (no *thl* Material Adverse Change), 3.1(j) (Trouchet escrow arrangements) and 3.1(q) (D&O Insurance) have been satisfied or waived in accordance with the terms of this deed;
- (d) ATL will provide a certificate to *thl* confirming whether or not ATL has breached any of its obligations under this deed (including a breach of a representation or warranty), and if it has, giving details of such breaches; and
- (e) *thl* will provide a certificate to ATL confirming whether or not *thl* has breached any of its obligations under this deed (including a breach of a representation or warranty), and if it has, giving details of such breaches.

3.6 Court approval

If the Court's approval for the Scheme in accordance with section 411(4) of the Corporations Act would impose any terms or conditions other than those set out in the Scheme then each such term or condition must be approved in writing by *thl* and ATL (both acting reasonably) prior to the Court granting the final orders and, if not so agreed, the Condition in clause 3.1(o) (Court approval) will not be satisfied.

3.7 Scheme voted down because of Headcount Test

If the Scheme is not approved by the Independent Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and *thl* or ATL considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then ATL must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by ATL to represent it in Court proceedings related to the Scheme, in consultation with *thl*, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

3.8 Conditions not capable of being fulfilled

- (a) If:
 - (i) any Condition is not satisfied or (where capable of waiver) waived by the date specified in this deed for its satisfaction (or an event occurs which would or is likely to prevent a condition precedent being satisfied by the date specified in this deed);
 - (ii) a circumstance occurs with the result that a Condition is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within 5 Business Days after the occurrence of the circumstance; or
 - (iii) it becomes more likely than not that the Scheme will not become Effective by the End Date,

then ATL and *thl* must consult in good faith with a view to determining whether:

- (iv) the Scheme may proceed by way of alternative means or methods;
 - (v) to extend the relevant time or date for satisfaction of the Condition;
 - (vi) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties;
 - (vii) to extend the End Date; or
 - (viii) do all, or any combination of, the matters listed in clauses 3.8(a)(iv) to 3.8(a)(vii) (inclusive).
- (b) Subject to clause 3.8(c), if a Condition becomes incapable of being satisfied before the End Date and ATL and *thl* are unable to reach agreement under clause 3.8(a) within 10 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:
 - (i) in relation to the Conditions in clauses 3.1(a) (Regulatory Approvals), 3.1(h) (No restraining orders), 3.1(k) (Independent Expert's Report), 3.1(n) (Shareholder Approval), 3.1(o) (Court approval), 3.1(l) (Refinancing) and 3.1(m) (Consent from ATL financiers or refinancing), either *thl* or ATL may terminate this deed by giving

the other notice without any liability to any party by reason of that termination alone;

- (ii) in relation to the Conditions in clauses 3.1(b) (No ATL Prescribed Occurrence), 3.1(d) (ATL Warranties), 3.1(f) (No ATL Material Adverse Change), 3.1(i) (Third party consents), 3.1(j) (Trouchet escrow arrangements) and 3.1(q) (D&O Insurance), *thl* may terminate this deed by giving ATL notice without any liability to any party by reason of that termination alone; and
 - (iii) in relation to the Conditions in clauses 3.1(c) (No *thl* Prescribed Occurrence), 3.1(e) (*thl* Warranties) and 3.1(g) (No *thl* Material Adverse Change), ATL may terminate this deed by giving *thl* notice without any liability to any other party by reason of that termination alone.
- (c) A party will not be entitled to terminate this deed under clause 3.8(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this deed by that party; or
 - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

3.9 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- (a) in the case of a Condition relating to a Regulatory Approval – the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases – there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this deed).

4. Scheme Structure

4.1 Scheme

- (a) ATL must, as soon as reasonably practicable after the date of this deed and substantially in compliance with the Timetable, propose the Scheme under which, subject to the Scheme becoming Effective, all of the Scheme Shares will be transferred to *thl* Acquirer and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the Scheme Consideration.
- (b) ATL must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Scheme without the prior written consent of *thl*.

4.2 Scheme Consideration

Subject to this deed and the Scheme, each of *thl* and *thl* Acquirer covenants in favour of ATL (in ATL's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to *thl* Acquirer of the Scheme Shares under the terms of the Scheme, on the Implementation Date, *thl* Acquirer will:

- (a) accept that transfer; and
- (b) provide or procure as set forth in clause 4.3 the provision to each Scheme Shareholder of the Scheme Consideration,

in accordance with the Scheme.

4.3 Allotment and issue of *thl* Consideration Shares

- (a) Subject to clause 4.3(c) and the Scheme becoming Effective, *thl* Acquirer must procure *thl* to, and *thl* must:

- (i) in accordance with the Deed Poll, issue the **thl** Consideration Shares to the Scheme Shareholders in accordance with the Scheme on terms that each **thl** Consideration Share will rank equally in all respects with each other **thl** Share then on issue;
 - (ii) ensure that on issue each **thl** Consideration Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of **thl**); and
 - (iii) use all reasonable endeavours to ensure that such **thl** Consideration Shares are listed for trading on NZX and ASX, and that trading in the **thl** Consideration Shares commences as soon as practicable after the Implementation Date.
- (b) To facilitate the issue of the **thl** Consideration Shares to Scheme Shareholders, ATL must provide to **thl**, or procure the provision to **thl** of, a complete copy of the ATL Register as at the Scheme Record Date (which must include the name, address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date. The details and information to be provided under this clause must be provided in such form as **thl**, its Advisers or share registry may reasonably require.
- (c) **thl** and **thl** Acquirer have no obligation to issue (or to procure the issue), and must not issue, any **thl** Consideration Shares to Foreign Scheme Shareholders, and instead:
- (i) **thl** will issue the **thl** Consideration Shares that would otherwise have been issued to the Foreign Scheme Shareholders to a nominee appointed by **thl**,
 - (ii) **thl** will procure that, as soon as reasonably practicable after the Implementation Date (and, in any event, not more than 15 Business Days after the Implementation Date), the nominee:
 - (A) sells, or procures the sale, of those **thl** Consideration Shares on-market and in the ordinary course of trading on NZX in such manner, at such price and on such other terms as the nominee determines in good faith; and
 - (B) remits the proceeds from that sale (after deducting any brokerage, duty and other selling costs, taxes and charges) to **thl**; and
 - (iii) as soon as practicable after the last sale of **thl** Consideration Shares in accordance with clause 4.3(c)(ii)(A) and remittance of the proceeds of that sale in accordance with clause 4.3(c)(ii)(B), **thl** will pay the proceeds it receives to the Foreign Scheme Shareholders in accordance with their entitlement in full satisfaction of the Foreign Scheme Shareholders' entitlement to the relevant **thl** Consideration Shares. No assurances will be given to Foreign Scheme Shareholders as to the price that will be achieved for the sale of **thl** Consideration Shares in accordance with this clause and the sale of the **thl** Consideration Shares will be at the risk of the Foreign Scheme Shareholder.
- (d) Any fractional entitlement of the Scheme Shareholder to a part of a **thl** Consideration Share will be rounded as follows:
- (i) if the fractional entitlement is less than 0.5, it will be rounded down to zero **thl** Consideration Shares; and
 - (ii) if the fractional entitlement is equal to or more than 0.5, it will be rounded up to one **thl** Consideration Shares.
- (e) In the case of Scheme Shares held in joint names, any certificates or uncertificated holding statements for **thl** Consideration Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the ATL Register on the Scheme Record Date.

4.4 ASX Admission

As soon as reasonably practicable after the date of this deed, **thl** must prepare all documents required by ASX to apply for ASX Admission and use all reasonable endeavours to ensure that the ASX grants approval for ASX Admission on or before the Delivery Time on the Second Court

Date, subject only to customary conditions, the Scheme becoming Effective and any other conditions acceptable to the parties (each acting reasonably), and *thl* must use reasonable endeavours to procure that trading in *thl* Consideration Shares commences on NZX and ASX on a normal trading basis by the Implementation Date or as soon as practicable thereafter.

4.5 Deed Poll

thl and *thl* Acquirer covenant in favour of ATL (in ATL's own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver the Deed Poll no later than the Business Day prior to the First Court Date.

5. Recommendation, intentions and announcements

5.1 ATL Board Recommendation and Voting Intention

- (a) Subject to clause 5.2, ATL must ensure that the Announcement and the Explanatory Booklet state that each ATL Director:
- (i) considers the Scheme to be in the best interests of the Independent Shareholders and recommends that the Independent Shareholders vote in favour of the Scheme (**Recommendation**); and
 - (ii) intends to cause any ATL Shares in which they have a Relevant Interest to be voted in favour of the Scheme (**Voting Intention**),
- in each case qualified only by words to the effect of:
- (iii) *'in the absence of a Superior Proposal'*; and
 - (iv) other than in respect of the Explanatory Booklet, *'subject to the Independent Expert concluding that the Scheme is in the best interests of the Independent Shareholders'* and in respect of the Explanatory Booklet and any public document issued after the Explanatory Booklet, *'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of the Independent Shareholders'*.
- (b) Subject to clause 5.2, ATL must ensure that the ATL Board collectively, and the members of the ATL Board individually, do not change, withdraw or modify any Recommendation or Voting Intention unless:
- (i) other than as a result of a breach of clause 14, a Superior Proposal is received by ATL or announced by a third party and the ATL Board, acting in good faith and after having taken advice from ATL's legal advisers (who must be reputable advisers experienced in transactions of this nature), determines that maintaining the Recommendation and Voting Intention would constitute a breach of the fiduciary duties or statutory obligations of any member of the ATL Board to ATL; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of the Independent Shareholders,
- and ATL has complied with its obligations under clause 14 (including ensuring that all of *thl*'s rights under clause 14.8 have been exhausted).

5.2 Exclusion from Recommendation

The obligation of ATL under clause 5.1 to ensure that each ATL Director provides and maintains the Recommendation is qualified to the extent that any ATL Director considers, acting reasonably (including after having taken legal advice from reputable and independent external legal advisers experienced in transactions of this nature) and in good faith, that the ATL Director should not provide or continue to maintain any recommendation (positive or adverse) because that ATL Director has an interest in the Scheme that is so materially different from other Independent Shareholders which would properly preclude or render it inappropriate for the ATL Director to provide any such recommendation.

5.3 Confirmation

ATL represents and warrants to *thl* that each ATL Director has confirmed the ATL Director's agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying the ATL Director's Recommendation or Voting Intention) other than in the circumstances referred to in clause 5.1(b).

5.4 Promotion of Scheme

During the Exclusivity Period, ATL must procure that the Senior Managers, as reasonably requested by *thl* and as agreed by ATL, participate in efforts to promote the merits of the Scheme, including:

- (a) meeting with key Independent Shareholders;
- (b) communicating with ATL's employees, customers and suppliers and the employees, customers and suppliers of ATL's Related Bodies Corporate; and
- (c) communicating with the public to promote the merits of the Scheme, subject only to:
 - (i) the Independent Expert not having concluded in the Independent Expert's Report (or any subsequent update of the report) that the Scheme is not in the best interests of the Independent Shareholders; and
 - (ii) there being no Superior Proposal.

6. Proposed Transaction – parties' respective implementation obligations

6.1 ATL's obligations

ATL must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable and after the date of this deed and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(Explanatory Booklet)** prepare the Explanatory Booklet in accordance with clause 6.3;
- (b) **(Independent Expert)** promptly:
 - (i) if not already done prior to the date of this deed, appoint the Independent Expert to prepare the Independent Expert's Report; and
 - (ii) provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(Investigating Accountant's Report)** appoint the Investigating Accountant to prepare the Investigating Accountant's Report and promptly provide all assistance and information reasonably requested by the Investigating Accountant in connection with the preparation of the Investigating Accountant's Report;
- (d) **(review of draft Independent Expert's Report)** on receipt from the Independent Expert, provide *thl* with the draft report received from the Independent Expert for factual accuracy review (noting in each case that any draft of the Independent Expert's Report provided to *thl* for review will not include those sections containing the Independent Expert's opinion), and promptly give to the Independent Expert any comments that *thl* provides ATL in relation to factual matters regarding *thl* in any draft of the Independent Expert's Report;
- (e) **(approval of draft for ASIC and ASX)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the ATL Board, or of a committee of the ATL Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the ASX Listing Rules;

- (f) **(liaison with ASIC and ASX)** as soon as reasonably practicable after the date of this deed and otherwise in accordance with the Timetable:
- (i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with clauses 6.1(e) and 6.2(f), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the ASX Listing Rules; and
 - (ii) liaise with ASIC and ASX during the period of their respective consideration of that draft of the Explanatory Booklet and keep *thl* reasonably informed of any matters raised by ASIC or ASX in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with *thl*, to resolve any such matters (provided that, where any matters relate to *thl* Information, ATL must not take any steps to address them without the prior written consent of *thl*, not to be unreasonably withheld or delayed);
- (g) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the ATL Board, or of a committee of the ATL Board appointed for the purpose, is held to consider approving the Explanatory Booklet for dispatch to the Independent Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (h) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (i) **(confirmation of no objection from ASX)** request ASX to confirm that it has no objection to the draft Explanatory Booklet;
- (j) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 6.1(g) and 6.2(g) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing ATL to convene the Scheme Meeting;
- (k) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (l) **(information):**
- (i) provide reasonable information about the Scheme and the ATL Shareholders to *thl* and its Related Bodies Corporate, which *thl* requests and reasonably requires in order to:
 - (A) facilitate the provision by, or on behalf of, *thl* of the Scheme Consideration; or
 - (B) review the tally of proxy appointments and directions received by ATL before the Scheme Meeting;
 - (ii) within 5 Business Days after the date of this deed, provide *thl* with:
 - (A) a copy of the ATL Register as at the date of this deed to the extent doing so does not breach applicable privacy laws; and
 - (B) the most recently available information in ATL's possession regarding the beneficial ownership of ATL Shares including a copy of the most recent beneficial ownership analysis report received by ATL (which may be as at a date prior to the date of this deed); and
 - (iii) provide *thl*, as soon as practicable after receiving a request from *thl*:
 - (A) a copy of the latest ATL Register; and
 - (B) the most recently available information in ATL's possession regarding the beneficial ownership of ATL Shares including a copy of the most recent beneficial ownership analysis report received by ATL;

- (m) (**convene Scheme Meeting**) subject to the Court granting orders under section 411(1) of the Corporations Act directing ATL to convene the Scheme Meeting, take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the ATL Shareholders and convening and holding the Scheme Meeting;
- (n) (**Court approval application if parties agree that conditions are capable of being satisfied**) if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.7 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Scheme;
- (o) (**appeal process**) if the Court refuses to make any orders directing ATL to convene the Scheme Meeting or approving the Scheme, ATL and *thl* must:
 - (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) must appeal the Court's decision unless the parties agree otherwise or an independent senior counsel from the Queensland bar gives written advise to a party that, in senior counsel's opinion, an appeal would have no reasonable prospects of success;
- (p) (**implementation of Scheme**) if the Scheme is approved by the Court:
 - (i) subject to the ASX Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Scheme Consideration as at the Scheme Record Date in accordance with the Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to *thl* on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (q) (**Regulatory notifications**) in relation to the Regulatory Approvals, lodge with any Governmental Agency within the relevant periods all documentation and filings required by law to be so lodged by ATL in relation to the Proposed Transaction;
- (r) (**thl Information**) without the prior written consent of *thl*, not use the *thl* Information for any purposes other than those contemplated by this deed or the Scheme;
- (s) (**Documents**) consult with *thl* in relation to the content of the documents required for the purpose of the Scheme including by sharing drafts of the originating process, affidavits, submissions, minutes of Court orders and other documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme and consider in good faith, for the purpose of amending those drafts, comments from *thl* on those drafts prior to filling those documents with the Court;
- (t) (**Shareholder support**) in consultation with *thl*, and subject to these arrangements being appropriately disclosed to the Court, encourage the Independent Shareholders to vote on the Scheme and, if requested to do so by *thl*, engage a proxy solicitation firm to assist in soliciting proxy votes (and ATL may independently decide to appoint a proxy solicitation firm after consulting in good faith with *thl*);
- (u) (**ASX Admission**) promptly provide reasonable assistance to *thl* to enable *thl* to prepare all documents required by ASX to apply for ASX Admission;
- (v) (**quotation of ATL Shares and ASX listing**) apply to ASX:

- (i) to have trading in ATL Shares suspended from the close of trading on the Effective Date;
- (ii) to have ATL removed from the official list of ASX from:
 - (A) the close of trading on the Business Day immediately following the Implementation Date; or
 - (B) subject to approval by ASX, such other later date after the Implementation Date to be determined by *thf*, and
- (w) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

6.2 *thf*'s obligations

thf must take all steps reasonably necessary to assist ATL to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) **(*thf* Information)** promptly provide to ATL, in a form appropriate for inclusion in the Explanatory Booklet, all *thf* Information that is required by all applicable law, the ASX Listing Rules, Australian Takeovers Panel policy and guidance notes and ASIC Regulatory Guides for inclusion in the Explanatory Booklet, which information must without limiting the above:
 - (i) contain all information necessary to enable ATL to ensure that the Explanatory Booklet complies with the requirements of RG 60;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(Regulatory notifications)** in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by *thf* in relation to the Proposed Transaction;
- (c) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (d) **(Investigating Accountant's Report)** provide all assistance and information reasonably requested by the Investigating Accountant in connection with the preparation of the Investigating Accountant's Report;
- (e) **(review of Explanatory Booklet)** as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by ATL and provide comments on those drafts in good faith;
- (f) **(approval of draft for ASIC and ASX)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the appropriate representatives of *thf* is held to consider approving those sections of that draft that relate to *thf*, including the *thf* Information, as being in a form appropriate for provision to ASIC and ASX for review;
- (g) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the appropriate representatives of *thf* is held to consider approving those sections of the Explanatory Booklet that relate to *thf* as being in a form appropriate for dispatch to Independent Shareholders, subject to approval of the Court;

- (h) (**Deed Poll**) deliver the Deed Poll executed by *thl* and *thl* Acquirer to ATL in accordance with clause 4.5;
- (i) (**ASX Admission**) apply to ASX for ASX Admission in accordance with clause 4.4;
- (j) (**consent**) provide a consent and use all reasonable endeavours to obtain consents from third parties in such form as ATL reasonably requires to the form and content in which the *thl* Information appears in the Explanatory Booklet;
- (k) (**Representation**) procure that *thl* is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (l) (**Cleansing notice**) lodging with NZX on the Cleansing Notice Date, the notice contemplated by, and complying with the content and lodgement requirements set out in, clause 20 of Schedule 8 of the FMCR;
- (m) (**promote the Proposed Transaction**) if requested by ATL, participate in reasonable efforts to promote the merits of the Proposed Transaction and the Scheme Consideration;
- (n) (**ATL Information**) without the prior written consent of ATL, not use ATL Information for any purposes other than those contemplated by this deed and the Scheme; and
- (o) (**Compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

6.3 Explanatory Booklet – preparation principles

- (a) As soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, ATL must prepare the Explanatory Booklet in compliance with:
 - (i) all applicable laws, in particular with the Corporations Act, RG 60, Australian Takeovers Panel policy and guidance notes and the ASX Listing Rules; and
 - (ii) this clause 6.3.
- (b) The Explanatory Booklet will include:
 - (i) letter from the ATL chairman;
 - (ii) letter from the *thl* chairman;
 - (iii) the terms of the Scheme;
 - (iv) the notice of Scheme Meeting and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with proxy forms for the Scheme Meeting and for any ancillary meeting;
 - (v) the ATL Information;
 - (vi) the *thl* Information;
 - (vii) a copy of this deed;
 - (viii) a copy of the executed Deed Poll;
 - (ix) a copy of the Investigating Accountant's Report;
 - (x) a report or opinion prepared by an accounting firm in relation to the potential taxation consequences of the Scheme on Scheme Shareholders; and
 - (xi) a copy of the Independent's Expert Report.
- (c) The Explanatory Booklet must include a statement, in a form to be agreed by the parties, to the effect that:
 - (i) other than the *thl* Information, the Investigating Accountant's Report, the report or opinion prepared by an accounting firm in relation to the potential taxation consequences of the Scheme on Scheme Shareholders and the Independent Expert's Report, the Explanatory Booklet has been prepared by ATL and is the

responsibility of ATL, and that *thl* assumes no responsibility for the accuracy or completeness of the Explanatory Booklet (other than *thl* Information); and

- (ii) the *thl* Information in the Explanatory Booklet has been provided by *thl* and is the responsibility of *thl* (other than any information provided by ATL to *thl* or obtained from ATL's public filings on ASX regarding the ATL Group contained in, or used in, the preparation of the information regarding the combined group following the implementation of the Scheme), and ATL assumes no responsibility for the accuracy or completeness of the *thl* Information.
- (d) ATL must make available to *thl* drafts of the Explanatory Booklet (excluding any part of the draft of the Independent Expert's Report which contains the Independent Expert's opinion), consult with *thl* in relation to the content of those drafts (other than the *thl* Information), and consider in good faith, for the purpose of amending those drafts, comments from *thl* on those drafts. *thl* acknowledges and agrees that ATL has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as provided in this deed with respect to the *thl* Information.
- (e) ATL must seek approval from *thl* for the form and context in which the *thl* Information appears in the Explanatory Booklet, which approval *thl* must not unreasonably withhold or delay, and ATL must not lodge the Explanatory Booklet with ASIC until such approval is obtained from *thl*.
- (f) If *thl* determines (acting reasonably), having regard to advice from a qualified tax advisor, that *thl* is either:
 - (i) required by law to withhold an issue of *thl* Consideration Shares (or a combination) to a Scheme Shareholder; or
 - (ii) liable to pay an amount to the Commissioner of Taxation under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) in respect of the acquisition of Scheme Shares from a Scheme Shareholder,

(either of the above being the **Relevant Amount**),

then:

- (iii) *thl* must provide written notice, and any reasonable information request by ATL in connection to the advice received by *thl*, to ATL as soon as reasonably practicable following receipt of the advice; and
- (iv) *thl* and ATL will use best endeavours to ensure that:
 - (A) the Explanatory Booklet includes information on *thl*'s withholding obligations of the Relevant Amount; and
 - (B) relevant Independent Shareholders are provided with an opportunity to provide a declaration form to ATL regarding either their tax residency status or interest in ATL Shares.
- (g) If ATL and *thl* disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If complete agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the *thl* Information, the ATL Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet; and
 - (ii) if the disagreement relates to the form or content of the *thl* Information, ATL will make such amendments to the form or content of the disputed part of the *thl* Information as *thl* reasonably requires.
- (h) ATL must take all reasonable steps, including by undertaking appropriate verification processes, to ensure that the Explanatory Booklet (other than the *thl* Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to the Independent Shareholders.

- (i) **thl** must take all reasonable steps, including by undertaking appropriate verification processes, to ensure that the **thl** Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to the Independent Shareholders.
- (j) ATL must provide to **thl** all such further or new information of which ATL becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60, Australian Takeovers Panel policy and guidance notes and the ASX Listing Rules.
- (k) **thl** must provide to ATL all such further or new information of which **thl** becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the **thl** Information continues to comply with the Corporations Act, RG 60, Australian Takeovers Panel policy and guidance notes and the ASX Listing Rules.
- (l) ATL and **thl** each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of the Independent Shareholders and **thl** and that they will use all reasonable endeavours and utilise all reasonably necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 6.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

7. Conduct of business before the Implementation Date

7.1 Conduct of ATL business

- (a) Subject to clause 7.2(a), from the date of this deed up to and including the Implementation Date, ATL must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
 - (i) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
 - (ii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
 - (iii) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the ATL Group is a party, and with laws, authorisations and licences applicable to each member of the ATL Group; and
 - (iv) not take or fail to take any action that constitutes an ATL Prescribed Occurrence or that could reasonably be expected to result in an ATL Prescribed Occurrence.
- (b) Without limiting clause 7.1(a) but subject to clause 7.2(a), ATL must not, and must procure that its Subsidiaries do not, from the date of this deed up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
 - (i) incur any additional Financial Indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the ATL Group, other than in the usual and ordinary course of business and consistent with past practice;
 - (ii) other than as approved in writing by **thl** (not to be unreasonably withheld or delayed), amend or take any action that:
 - (A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; or

(B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of,

any Financial Indebtedness to which one or more members of the ATL Group are a party;

- (iii) make any change to its constitution;
- (iv) (except as required by law or as provided in an existing contract in place as at the date of this deed) enter into or make any material change to the terms of employment of (including increasing the remuneration or compensation of), any person, including an officer, director, executive or other employee, where the relevant action is an ATL Significant Approval Matter (**Key Person**);
- (v) increase the remuneration or compensation of any person, including an officer, director, executive or other employee of the ATL Group where the relevant action is an ATL Significant Approval Matter, other than pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Due Diligence Material;
- (vi) amend the terms of any option, performance right, incentive or share plan or accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan);
- (vii) rescind the suspension of ATL's STI Plan (or adopt any alternative short term incentive plan);
- (viii) offer to any employee the right to participate in the STI Plan (or any other alternative short term incentive plan);
- (ix) implement the LTI Plan or offer to any employee the right to participate in the LTI Plan;
- (x) terminate or encourage the resignation of a Key Person, except for cause (acting reasonably) in accordance with contractual arrangements in effect on the date of this deed or otherwise in accordance with current personnel practices;
- (xi) pay any of its officers, directors, executives or other employees a bonus payment, a severance, termination or retention payment where the relevant action is an ATL Significant Approval Matter, other than pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Due Diligence Material;
- (xii) make any concession or acknowledgment in respect of, or vary any pattern of work of, any employee or group of employees that is reasonably expected to give rise to a future potential claim, dispute or liability for the ATL Group where the relevant action is an ATL Significant Approval Matter;
- (xiii) settle or compromise any dispute, audit or inquiry in relation to tax or duty or amends any tax return, other than in the ordinary course of its business;
- (xiv) commence, threaten in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding where the relevant action is an ATL Significant Approval Matter;
- (xv) (except under contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Due Diligence Material) enter into any enterprise bargaining agreement or similar collective employment agreement;
- (xvi) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, where the relevant action is an ATL Significant Approval Matter;
- (xvii) incur or enter into commitments involving capital expenditure where the relevant action is an ATL Significant Approval Matter;

- (xviii) enter into, vary or terminate any contract, joint venture, partnership or commitment where the relevant action is an ATL Significant Approval Matter;
- (xix) enter into any new financing arrangement, agreement or otherwise provide financial accommodation other than with members of the ATL Group (irrespective of what form that accommodation takes), or amend the terms of any existing financing arrangement, agreement or instrument;
- (xx) write-down any of its material assets other than in accordance with the AU Accounting Standards;
- (xxi) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges or interest rate hedges (including basis swaps on interest rates, such that the net period for the floating interest on the swaps is the same period as the net floating interest period on the relevant loan) made in the ordinary course of business consistent with past practice and in accordance with existing policy as at the date of this deed;
- (xxii) pay, incur or agree to pay or incur transaction costs (being any investment banking, financial adviser, legal, accounting, share registry and other costs payable to other advisers or third party service providers, and any payments to employees that relate directly to the Proposed Transaction such as deal or retention bonuses) other than in accordance with arrangements Fairly Disclosed in the Due Diligence Material prior to the date of this deed;
- (xxiii) issue, or agree to issue, or grant an option to subscribe for, debentures (as defined in section 9 of the Corporations Act) other than under an existing financing arrangement which has been Fairly Disclosed in the Due Diligence Material;
- (xxiv) alter in any material respect any accounting policy of any member of the ATL Group other than any change required by the AU Accounting Standards; or
- (xxv) amend in a material respect or terminate any existing shareholders agreement, joint venture agreement or other similar investor agreements or arrangements, or enter into any shareholders agreement, joint venture agreement or other similar investor agreement or arrangement.

7.2 Permitted activities by ATL

- (a) The obligations of ATL under clause 7.1 do not apply in respect of any matter:
 - (i) undertaken by a member of the ATL Group in conducting its businesses in the usual and ordinary course and consistent with past practice as Fairly Disclosed in the Due Diligence Materials;
 - (ii) required to be done or procured by ATL or its Subsidiaries under, or which is otherwise contemplated by, this deed or the Scheme;
 - (iii) required by law or by an order of a court or Governmental Agency;
 - (iv) subject to clause 7.2(b), Fairly Disclosed in the Due Diligence Material or in documents that were publicly available in the 24 months prior to the date of this deed from public filings of ATL with ASX, ASIC or public registers as being actions that the ATL Group may carry out between the date of this deed and the Implementation Date;
 - (v) the undertaking of which *thl* has approved in writing (which approval must not be unreasonably withheld or delayed);
 - (vi) required in order to comply with any law relating to Tax, including to pay any Tax when due; or
 - (vii) which, in the reasonable opinion of ATL, is a reasonable and prudent response to an emergency or disaster (including, but not limited to an epidemic or pandemic (including COVID-19) or the impact arising from such an event or a situation giving

rise to a risk of personal injury or damage to property), or any escalation of the same, and it is impractical to seek the approval of *thl* prior to giving effect to the response.

- (b) ATL must, in respect of any matter referred to in clause 7.2(a)(iv) above that it proposes to undertake, promptly provide *thl* with any information regarding the matter reasonably requested by *thl*.
- (c) Clause 7.2(b) does not operate to provide *thl* with a veto right in respect of any matter referred to in clause 7.2(a)(iv).

7.3 Conduct of *thl*/business

- (a) Subject to clause 7.4(a), from the date of this deed up to and including the Implementation Date, *thl* must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
 - (i) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
 - (ii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
 - (iii) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the *thl* Group is a party, and with laws, authorisations and licences applicable to each member of the *thl* Group; and
 - (iv) not take or fail to take any action that constitutes a *thl* Prescribed Occurrence or that could reasonably be expected to result in a *thl* Prescribed Occurrence.
- (b) Without limiting clause 7.3(a) but subject to clause 7.4(a), *thl* must not, and must procure that its Subsidiaries do not, from the date of this deed up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
 - (i) incur any additional Financial Indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the *thl* Group, other than in the usual and ordinary course of business and consistent with past practice;
 - (ii) other than as approved in writing by ATL (not to be unreasonably withheld or delayed), amend or take any action that:
 - (A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; or
 - (B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of,
any Financial Indebtedness to which one or more members of the *thl* Group are a party;
 - (iii) make any change to its constitution;
 - (iv) (except as required by law or as provided in an existing contract in place as at the date of this deed) enter into or make any material change to the terms of employment of (including increasing the remuneration or compensation of), any person, including an officer, director, executive or other employee where the relevant action is a *thl* Significant Approval Matter (**Key Person**);
 - (v) increase the remuneration or compensation of any person, including an officer, director, executive or other employee of the *thl* Group where the relevant action is a *thl* Significant Approval Matter, other than pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the *thl* Due Diligence Material,

- (vi) amend the terms of any option, performance right, incentive or share plan;
- (vii) accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan);
- (viii) terminate or encourage the resignation of a Key Person, except for cause (acting reasonably) in accordance with contractual arrangements in effect on the date of this deed or otherwise in accordance with current personnel practices;
- (ix) pay any of its officers, directors, executives or other employees a bonus payment, a severance, termination or retention payment where the relevant action is a **thl** Significant Approval Matter, other than pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the **thl** Due Diligence Material;
- (x) make any concession or acknowledgment in respect of, or vary any pattern of work of, any employee or group of employees that is reasonably expected to give rise to a future potential claim, dispute or liability for the **thl** Group where the relevant action is a **thl** Significant Approval Matter;
- (xi) settle or compromise any dispute, audit on inquiry in relation to tax or duty or amends any tax return, other than in the ordinary course of its business;
- (xii) commence, threaten in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding where the relevant action is a **thl** Significant Approval Matter;
- (xiii) (except under contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the **thl** Due Diligence Material) enter into any enterprise bargaining agreement or similar collective employment agreement;
- (xiv) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking where the relevant action is a **thl** Significant Approval Matter;
- (xv) incur or enter into commitments involving capital expenditure where the relevant action is a **thl** Significant Approval Matter;
- (xvi) enter into, vary or terminate any contract, joint venture, partnership or commitment where the relevant action is a **thl** Significant Approval Matter;
- (xvii) enter into any new financing arrangement, agreement or otherwise provide financial accommodation other than with members of the **thl** Group (irrespective of what form that accommodation takes);
- (xviii) write-down any of its material assets other than in accordance with the NZ Accounting Standards;
- (xix) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges or interest rate hedges (including basis swaps on interest rates, such that the net period for the floating interest on the swaps is the same period as the net floating interest period on the relevant loan) made in the ordinary course of business consistent with past practice and in accordance with existing policy as at the date of this deed;
- (xx) pay, incur or agree to pay or incur transaction costs (being any investment banking, financial adviser, legal, accounting, share registry and other costs payable to other advisers or third party service providers, and any payments to employees that relate directly to the Proposed Transaction such as deal or retention bonuses) other than in accordance with arrangements Fairly Disclosed in the **thl** Due Diligence Material prior to the date of this deed;
- (xxi) issue, or agree to issue, or grant an option to subscribe for, debentures other than under an existing financing arrangement which has been Fairly Disclosed in the **thl** Due Diligence Material;

- (xxii) alter in any material respect any accounting policy of any member of the **thl** Group other than any change required by the NZ Accounting Standards; or
- (xxiii) amend in a material respect or terminate any existing shareholders agreement, joint venture agreement or other similar investor agreements or arrangements, or enter into any shareholders agreement, joint venture agreement or other similar investor agreement or arrangement.

7.4 Permitted activities by *thl*

- (a) The obligations of **thl** under clause 7.3 do not apply in respect of any matter:
 - (i) undertaken by a member of the **thl** Group in conducting its businesses in the usual and ordinary course and consistent with past practice;
 - (ii) required to be done or procured by **thl** or its Subsidiaries under, or which is otherwise contemplated by, this deed or the Scheme;
 - (iii) required by law or by an order of a court or Governmental Agency;
 - (iv) subject to clause 7.4(b), Fairly Disclosed in the **thl** Due Diligence Material or in documents that were publicly available in the 24 months prior to the date of this deed from public filings of **thl** with NZX or public registers as being actions that the **thl** Group may carry out between the date of this deed and the Implementation Date;
 - (v) the undertaking of which ATL has approved in writing (which approval must not be unreasonably withheld or delayed);
 - (vi) required in order to comply with any law relating to Tax, including to pay any Tax when due; or
 - (vii) which, in the reasonable opinion of **thl**, is a reasonable and prudent response to an emergency or disaster (including, but not limited to an epidemic or pandemic (including COVID-19) or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property), or any escalation of the same, and it is impractical to seek the approval of **thl** prior to giving effect to the response.
- (b) **thl** must, in respect of any matter referred to in clause 7.4(a)(iv) above that it proposes to undertake, promptly provide ATL with any information regarding the matter reasonably requested by ATL.
- (c) Clause 7.4(b) does not operate to provide ATL with a veto right in respect of any matter referred to in clause 7.4(a)(iv).

7.5 Access

- (a) In the period from the date of this deed to the Implementation Date, ATL and **thl** must:
 - (i) procure that at least two members of ATL's and **thl**'s executive management team meet regularly on at least a weekly basis (unless otherwise agreed by the parties) to assist with, among other things:
 - (A) considering matters relevant to the integration of ATL Group into **thl** Group, including in relation to identifying key ATL employees who will be provided with protective contracts (with the understanding that this will be at least three employees);
 - (B) discussing and planning the implementation of the Scheme;
 - (C) considering any other matters as agreed between ATL and **thl** from time to time;
 - (D) keeping each other fully informed of the matters contemplated by clause 7.5(a)(ii) below; and
 - (E) providing each other with access to information and people it has requested under clause 7.5(a)(iii) below;

- (ii) keep each other fully informed of all material developments relating to each of them and provide to each other monthly management, financial and operational reports provided to their respective boards;
 - (iii) promptly following a reasonable request by ATL or *thl*, provide access to:
 - (A) documents and information relating to it; and
 - (B) directors, executives (including in the case of ATL, the Senior Managers), for the purpose of or in connection with:
 - (C) planning the transition of the ATL Group and other matters relating to the conduct of the ATL Group following the Implementation Date;
 - (D) the financing arrangements in respect of the Proposed Transaction, including any refinancing of existing Financial Indebtedness of the ATL Group;
 - (E) understanding the financial position, businesses and operations of it and its Subsidiaries including the cashflow and working capital position of each of them;
 - (F) holding discussions with third parties, with the consent of ATL (such consent not to be unreasonably withheld or delayed) that *thl* and its Authorised Persons reasonably wish to enter into with respect to the Proposed Transaction prior to the Implementation Date, including procuring that Senior Managers participate in such discussions; and
 - (G) otherwise facilitating the Proposed Transaction;
 - (iv) provide each other with complete copies of monthly accounts prepared by management to the extent such accounts are prepared (which must be prepared in accordance with IFRS, AIFRS or GAAP (as applicable) applied to the entities on a basis consistent with past practice) as soon as reasonably practicable after those materials have been provided to their respective boards.
- (b) Nothing in this clause 7.5 obliges ATL or *thl* to do anything, or to provide any information:
- (i) which would cause undue or unreasonable disruption to the operation of its business in the ordinary course;
 - (ii) concerning the ATL Directors' consideration of the Scheme or any Competing Proposal (without limiting ATL's obligations under clause 14); or
 - (iii) which would breach its constituent documents, any applicable law (including privacy and competition laws), or any obligation of confidentiality to any person or result in the loss of legal professional privilege.
- (c) ATL and *thl* will provide reasonable assistance to each other for the purpose of satisfying their respective obligations under this clause 7.5 but nothing in this clause 7.5 requires ATL or *thl* to provide access to its people or documentation or to take any other action which would involve refreshing or updating the Due Diligence Material or *thl* Due Diligence Material, as applicable, or which would disrupt the usual and ordinary course of ATL's or *thl*'s businesses and operations, as applicable.

7.6 Change of control rights

In respect of Material Contracts:

- (a) the parties will seek to identify any change of control or similar provisions, or any consent, approval or notification requirements in any Material Contract which would be triggered by the implementation of the Proposed Transaction;
- (b) the parties will use their reasonable endeavours to agree a proposed strategy to obtain any approvals or consents required pursuant to clause 7.6(a) and, if agreed, ATL will then contact the relevant counterparties to these contracts to request that they provide any consent required in relation to the Proposed Transaction (including confirmation that they

will not terminate those contracts due to a change in control of ATL as a result of the implementation of the Proposed Transaction);

- (c) ATL must use reasonable endeavours to obtain the consents referred to in clause 7.6(a) in accordance with the agreed strategy as expeditiously as possible and, in any event, prior to the Second Court Date and to ensure that once obtained, the consents are not withdrawn, cancelled or revoked, including by:
 - (i) cooperating with, and doing all things reasonably requested by **thl** or the counterparty to a Material Contract;
 - (ii) promptly provide any information reasonably required by a counterparty to a Material Contract, including providing any information requested by **thl** or those counterparties from ATL or in relation to an ATL Related Person; and
 - (iii) make representatives of ATL available, where necessary, to meet with counterparties to Material Contracts to deal with issues arising in relation to the change of control of ATL;
- (d) **thl** must cooperate with, and provide any assistance (including providing factual information regarding **thl** and attending relevant meetings), reasonably requested by ATL for the purposes of ATL complying with its obligations under this clause 7.6, except that **thl** is not responsible for any costs incurred in connection with any application for or granting of consent from the counterparties to the Material Contracts; and
- (e) ATL must not, without the prior written consent of **thl** which must not be unreasonably withheld or delayed, incur any costs other than reasonable travel and legal expenses in connection with performing its obligations under this clause.

8. Actions on and following Implementation Date

8.1 Reconstitution of the board of **thl** and each member of the ATL Group

- (a) On the Implementation Date, but subject to the Scheme Consideration having been paid in full to ATL or provided by **thl** and receipt by **thl** or ATL (as applicable) of signed consents to act:
 - (i) ATL must take all actions necessary (and in accordance with the constitution of the ATL Group member, the Corporations Act and the ASX Listing Rules) to appoint the persons nominated by **thl** as new ATL Directors and new directors of each Subsidiary; and
 - (ii) **thl** must take all actions necessary (and in accordance with the constitution of **thl**, the Companies Act and the NZX Listing Rules) to appoint:
 - (A) Luke Trouchet (as an executive director); and
 - (B) two other independent directors of ATL as at the Scheme Record Date and nominated in writing by ATL to **thl** before the Implementation Date, as directors of **thl**.
- (b) Without limiting clause 8.1(a), on the Implementation Date, but subject to receipt by ATL of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any member of the ATL Group (without prejudice to any rights they may have under any deed of indemnity, access and insurance or policy of directors' and officers' insurance), ATL must procure that:
 - (i) all outgoing ATL Directors resign from the ATL Board; and
 - (ii) all outgoing directors of each Subsidiary of ATL resign from their office.
- (c) The parties acknowledge that the board of **thl** is currently expected to remain as constituted in accordance with clause 8.1(a)(ii) until the date of **thl**'s 2022 annual general meeting after which point **thl** intends to have a board consisting of a maximum of eight directors.

8.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

- (a) *thl* will issue the Scheme Consideration to relevant Scheme Shareholders in accordance with the Scheme;
- (b) the *thl* Board, the ATL Board and the board of each Subsidiary of ATL will be reconstituted in accordance with clause 8.1;
- (c) *thl* will acquire all of the Scheme Shares in accordance with the Scheme; and
- (d) ATL will apply to ASX to be removed from the official list of ASX (to the extent this has not been done prior to the Implementation Date).

9. Representations and warranties

9.1 *thl* representations regarding *thl* and *thl* Acquirer

thl represents and warrants to ATL (on ATL's own behalf and separately as trustee for each of the other ATL Parties) that, as at the date of this deed and on each subsequent day until the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date):

- (a) each of *thl* and *thl* Acquirer is a validly existing corporation registered under the laws of its place of incorporation;
- (b) *thl* is the sole holder of all issued shares in *thl* Acquirer;
- (c) the execution and delivery of this deed by *thl* and *thl* Acquirer has been properly authorised by all necessary corporate action and *thl* and *thl* Acquirer each have full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
- (d) this deed constitutes legal, valid and binding obligations on *thl* and *thl* Acquirer and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which *thl* or *thl* Acquirer is a party or is bound;
- (e) the *thl* Information provided to ATL in accordance with clause 6.2(a) for inclusion in the Explanatory Booklet will comply in all material respects with the applicable requirements of the Corporations Act, the ASX Listing Rules, RG 60 and Australian Takeovers Panel policy and guidance notes;
- (f) all information provided by or on behalf of *thl* to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report;
- (g) all information provided by or on behalf of *thl* to the Investigating Accountant to enable the Investigating Accountant's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Investigating Accountant will rely upon that information for the purposes of preparing the Investigating Accountant's Report;
- (h) each member of the *thl* Group has all material licences and permits necessary for it to conduct its business and has complied with the terms of those licences and permits in all material respects;
- (i) as at the date of this deed, each of *thl* and *thl* Acquirer is not aware of any facts or circumstances that will cause a third party, as a result of the entry into this document and the implementation of either the Proposed Transaction to exercise a right to terminate a contract which is material to the business of the *thl* Group or vary the performance of any material obligation of *thl* under any such contract or exercise a right to acquire, or require the disposal of, any material assets of the *thl* Group;

- (j) **thl** has provided all material information relating to the expected availability, terms likely to apply to and any material development that would be reasonably likely to materially adversely affect any Financial Indebtedness or debt arrangements of the **thl** Group, from or after the date of this deed;
- (k) as at the date the Explanatory Booklet is dispatched to the Independent Shareholders, the **thl** Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (l) **thl** will, as a continuing obligation, provide to ATL all such further or new information which may arise after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting which is necessary to ensure that the **thl** Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (m) **thl's** financial statements as disclosed to the NZX have been prepared in accordance with the NZ Accounting Standards on a basis consistent with past practice financial statements and, so far as **thl** is aware, there has not been any event, change, effect or development which would require **thl** to restate its financial statements as disclosed to the NZX;
- (n) during the five year period ending on the date of this deed, no member of the **thl** Group nor, to the **thl** Group's knowledge, any of the officers, directors, employees, agents, intermediaries, representatives, suppliers or joint venture partners of any member of the **thl** Group has, directly or indirectly, in connection with the business of the **thl** Group:
 - (i) requested, received, made, offered, authorised, solicited or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;
 - (ii) requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
 - (iii) requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
 - (iv) established or maintained any unlawful fund of corporate monies or other properties;
 - (v) created or caused the creation of any false or inaccurate books and records of any member of the **thl** Group related to any of the foregoing;
 - (vi) otherwise directly or indirectly violated any local or international anti-corruption or anti-bribery law (including, without limitation, the US Foreign Corrupt Practices Act of 1977 as amended and the UK Bribery Act of 2010) applicable to the **thl** Group; or
 - (vii) have sold or purchased goods or services from, or otherwise engaged in any such transaction with, any person in Cuba, Iran, the Democratic Republic of Korea, Syria, Sudan or the Crimea Region of Ukraine and no such sales, purchases or other transactions are pending or have any outstanding obligations involving any person in Cuba, Iran, the Democratic Republic of Korea, Syria, Sudan or the Crimea Region of Ukraine;
- (o) during the five year period ending on the date of this deed, no current or former director or officer of any member of the **thl** Group is or was a Sanctioned Person and, so far as **thl** is aware, no member of the **thl** Group or any of their respective current or former employees or their respective intermediaries is or was a Sanctioned Person. For the purposes of this representation, a **Sanctioned Person** means:

- (i) any person listed in any sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom, Canada, or Australia;
 - (ii) any person operating organised or resided in a U.S Sanctioned Country (including Iran, Syria, Sudan, Cuba, the Democratic Republic of Korea, or the Crimea Region of Ukraine); or
 - (iii) any person owned or controlled by any such person;
- (p) as at the date of this deed, no shareholder approval of **thl** is required to complete the Proposed Transaction under the Companies Act, the NZX Listing Rules or its constitution;
- (q) except for the Regulatory Approvals contemplated in this deed and approval of the Scheme by the Court, no consents or approvals of or filings or registrations with any Governmental Agency are necessary in connection with:
- (i) the execution and delivery of this deed by **thl** or **thl** Acquirer; or
 - (ii) the implementation of the Scheme and the Proposed Transaction;
- (r) as at the date of this deed, the total issued capital of **thl** is:
- (i) 151,963,759 **thl** Shares;
 - (ii) 5,164,999 long-term incentive options;
 - (iii) 985,630 redeemable ordinary shares;
 - (iv) 1,434,439 retention share options; and
 - (v) 1,347,022 retention share rights,
- and there are no other **thl** options, warrants, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing that has not been Fairly Disclosed in an announcement by **thl** to NZX or in the **thl** Due Diligence Material);
- (s) the **thl** Shares issued under the Scheme Consideration will, on issue:
- (i) be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of **thl**); and
 - (ii) rank equally in all respects with each other **thl** Share then on issue;
- (t) as at the date of this deed, **thl** is not in breach of its continuous disclosure obligations under the NZX Listing Rules and is not relying on the exclusion in NZX Listing Rule 3.1.2 to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to ATL on or before the date of this deed) that a reasonable person would expect to have a material effect on the price or value of **thl** Shares;
- (u) as at the date of this deed, neither the NZ Takeovers Panel or NZX has made a determination against any member of the **thl** Group for any contravention of the requirements of the Companies Act or the NZX Listing Rules or any rules, regulations or policy statements under the Companies Act or the NZX Listing Rules;
- (v) as at the date of this deed, no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of **thl** and **thl** Acquirer, threatened, which, if adversely decided, could reasonably be expected to give rise to a **thl** Material Adverse Change;
- (w) **thl** currently intends to retain the key ATL brands (being the “Apollo” and “CanaDream” brands) as trading brands for the rental businesses in Australia, New Zealand and Canada, as applicable, noting however the company brand and brand strategies across the **thl** Group will always remain subject to **thl** Board review and that this intention may change after the Implementation Date;

- (x) the **thl** Due Diligence Material has been disclosed in good faith and, so far as the **thl** Board and each of Grant Webster, Nick Judd, Steven Hall and Amir Ansari are aware after due enquiry, the **thl** Due Diligence Material is true, complete and accurate and not misleading or deceptive in any material respect, including by omission;
- (y) as at the date of this deed, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to **thl** or another **thl** Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed or under the Scheme; and
- (z) **thl** is not aware of any information relating to the **thl** Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be expected to give rise to a **thl** Material Adverse Change that has not been Fairly Disclosed in an announcement by **thl** to NZX or in the **thl** Due Diligence Material.

9.2 **thl's indemnity**

thl agrees with ATL (on ATL's own behalf and separately as trustee or nominee for each of the other ATL Parties) to indemnify and keep indemnified the ATL Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the ATL Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 9.1.

9.3 **Qualifications on thl's representations, warranties and indemnities**

The representations and warranties in clause 9.1 and the indemnity in clause 9.2 are each subject to matters which:

- (a) are expressly provided for in this deed;
- (b) have been Fairly Disclosed in:
 - (i) the **thl** Due Diligence Material; and
 - (ii) **thl's** announcements to NZX in the 24 month period prior to the date of this deed; or
- (c) are within the actual knowledge of ATL as at the date of this deed, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this deed:
 - (i) Luke Trouchet;
 - (ii) Karl Trouchet; and
 - (iii) Kelly Shier.

9.4 **ATL representations**

ATL represents and warrants to **thl** (on its own behalf and separately as trustee for each of the **thl** Parties) that as at the date of this deed and on each subsequent day until the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date):

- (a) ATL is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this deed by ATL has been properly authorised by all necessary corporate action and ATL has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
- (c) this deed constitutes legal, valid and binding obligations on ATL and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which ATL or any of its Subsidiaries is a party or to which they are bound;

- (d) the ATL Information contained in the Explanatory Booklet will comply in all material respects with the requirements of the Corporations Act, ASX Listing Rules, RG 60 and Australian Takeovers Panel policy and guidance notes;
- (e) except for the Regulatory Approvals contemplated in this deed and approval of the Scheme by the Court, no consents or approvals of or filings or registrations with any Governmental Agency are necessary in connection with:
 - (i) the execution and delivery of this deed by ATL; or
 - (ii) the implementation of the Scheme and the Proposed Transaction;
- (f) as at the date the Explanatory Booklet is dispatched to the Independent Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the *th/* Information, Investigating Accountant's Report, the report or opinion prepared by an accounting firm in relation to the potential taxation consequences of the Scheme on Scheme Shareholders and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (g) as at the date of this deed, ATL is not in breach of its continuous disclosure obligations under the ASX Listing Rules and is not relying on the exclusion in ASX Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to *th/* on or before the date of this deed) that a reasonable person would expect to have a material effect on the price or value of ATL Shares;
- (h) as at the date of this deed, the total issued capital of ATL is 186,150,908 ATL Shares and there are no other ATL options, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing);
- (i) ATL's Short Term Incentive Plan (as described in ATL's annual report for the year ended 30 June 2021) (**STI Plan**) is suspended and ATL has no obligation to provide any benefits to any employees under the STI Plan in respect of the financial years ending on or prior to 30 June 2021;
- (j) ATL's Share Appreciation Rights Plan (as described in ATL's annual report for the year ended 30 June 2021) (**LTI Plan**) has not been implemented by ATL and ATL has no obligation to provide any benefits to any employees under the LTI Plan in respect of the financial years ending on or prior to 30 June 2021;
- (k) the STI Plan and the LTI Plan are entirely discretionary and may be terminated by ATL at any time and no employee has any contractual or legal right to participate in either Plan (and no employee has been offered a right to participate in the LTI Plan);
- (l) each member of the ATL Group has all material licences and permits necessary for it to conduct its business and has complied with the terms of those licences and permits in all material respects;
- (m) each member of the ATL Group has complied with its obligations under the Material Contracts in all material respects;
- (n) as at the date of this deed, neither ASIC nor ASX (as applicable) has made a determination against any member of the ATL Group for any contravention of the requirements of the Corporations Act or the ASX Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules;
- (o) during the five year period ending on the date of this deed, no member of the ATL Group nor, to the ATL Group's knowledge, any of the officers, directors, employees, agents, intermediaries, representatives, suppliers or joint venture partners of any member of the ATL Group has, directly or indirectly, in connection with the business of the ATL Group:
 - (i) requested, received, made, offered, authorised, solicited or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;

- (ii) requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
 - (iii) requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
 - (iv) established or maintained any unlawful fund of corporate monies or other properties;
 - (v) created or caused the creation of any false or inaccurate books and records of any member of the ATL Group related to any of the foregoing;
 - (vi) otherwise directly or indirectly violated any local or international anti-corruption or anti-bribery law (including, without limitation, the US Foreign Corrupt Practices Act of 1977 as amended and the UK Bribery Act of 2010) applicable to the ATL Group; or
 - (vii) have sold or purchased goods or services from, or otherwise engaged in any such transaction with, any person in Cuba, Iran, the Democratic Republic of Korea, Syria, Sudan or the Crimea Region of Ukraine and no such sales, purchases or other transactions are pending or have any outstanding obligations involving any person in Cuba, Iran, the Democratic Republic of Korea, Syria, Sudan or the Crimea Region of Ukraine;
- (p) during the five year period ending on the date of this deed, no current or former director or officer of any member of the ATL Group is or was a Sanctioned Person and, so far as ATL is aware, no member of the ATL Group or any of their respective current or former employees or their respective intermediaries is or was a Sanctioned Person. For the purposes of this representation, a **Sanctioned Person** means:
- (i) any person listed in any sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom, Canada, or Australia;
 - (ii) any person operating organised or resided in a U.S Sanctioned Country (including Iran, Syria, Sudan, Cuba, the Democratic Republic of Korea, or the Crimea Region of Ukraine); or
 - (iii) any person owned or controlled by any such person;
- (q) ATL's financial statements as disclosed to ASX have been prepared in accordance with the AU Accounting Standards on a basis consistent with past practice financial statements and, so far as ATL is aware, there has not been any event, change, effect or development which would require ATL to restate its financial statements as disclosed to ASX;
- (r) there is no security interest over all or any of its or its Subsidiaries' present or future assets or revenues of its business or its Subsidiaries' businesses that has not been Fairly Disclosed in an announcement by ATL to ASX or in the Due Diligence Material;
- ATL has provided all material information relating to the expected availability, terms likely to apply to and any material development that would be reasonably likely to materially adversely affect any Financial Indebtedness or debt arrangements of the ATL Group, from or after the date of this deed;
- (s) as at the date of this deed, no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of ATL, threatened, which, if adversely decided, could reasonably be expected to give rise to an ATL Material Adverse Change;
- (t) the Due Diligence Material have been disclosed in good faith and, so far as the ATL Board and Kelly Shier are aware after due enquiry, the Due Diligence Material is true, complete and accurate and not misleading or deceptive in any material respect, including by omission;

- (u) as at the date of this deed, ATL is not aware of any facts or circumstances that will cause a third party, as a result of the entry into this document and the implementation of either the Proposed Transaction to exercise a right to terminate a contract which is material to the business of the ATL Group or vary the performance of any material obligation of ATL under any such contract or exercise a right to acquire, or require the disposal of, any material assets of the ATL Group;
- (v) as at the date of this deed, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to ATL or another ATL Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed or under the Scheme;
- (w) ATL is not aware of any information relating to the ATL Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be expected to give rise to an ATL Material Adverse Change that has not been Fairly Disclosed in an announcement by ATL to ASX or in the Due Diligence Material; and
- (x) (**ATL Shares not indirect Australian real property interests**) the relevant ATL Shares held by each Scheme Shareholders are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Shareholder.

9.5 ATL's indemnity

ATL agrees with *thl* (on *thl*'s own behalf and separately as trustee for each of the *thl* Parties) to indemnify and keep indemnified the *thl* Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the *thl* Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 9.4.

9.6 Qualifications on ATL's representations, warranties and indemnities

The representations and warranties in clause 9.4 and the indemnity in clause 9.5 are each subject to matters which:

- (a) are expressly provided for in this deed;
- (b) have been Fairly Disclosed in:
 - (i) the Due Diligence Material; and
 - (ii) ATL's announcements to ASX in the 24 month period prior to the date of this deed; or
- (c) are within the actual knowledge of *thl* as at the date of this deed, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this deed:
 - (i) Grant Webster; and
 - (ii) Nick Judd.

9.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

9.8 Survival of representations

Each representation and warranty in clauses 9.1 and 9.4:

- (a) is severable;
- (b) will survive the termination of this deed; and

- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

9.9 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.5) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.

10. Releases

10.1 ATL Parties

- (a) Without limiting *thl*'s rights under clause 9, *thl* (for itself and as agent of every member of the *thl* Group) releases all rights against, and agrees with ATL that it will not make a Claim against, any ATL Party (other than ATL) in connection with:
 - (i) ATL's execution or delivery of this deed;
 - (ii) any breach of any representation, covenant and warranty of ATL in this deed;
 - (iii) the implementation of the Scheme; or
 - (iv) any disclosure made by any ATL Party including in the Due Diligence Material that contains any statement which is false or misleading whether in content or by omission,

except to the extent the relevant ATL Party has not acted in good faith or has engaged in wilful misconduct.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. ATL receives and holds the benefit of this clause as trustee for each other ATL Party.

10.2 *thl* Parties

- (a) Without limiting ATL's rights under clause 9, ATL releases its rights against, and agrees with *thl* that it will not make a Claim against any *thl* Party (other than *thl*) in connection with:
 - (i) *thl*'s execution or delivery of this deed;
 - (ii) any breach of any representation, covenant and warranty of *thl* in this deed;
 - (iii) the implementation of the Scheme; or
 - (iv) any disclosure made by any *thl* Party that contains any statement which is false or misleading whether in content or by omission,

except to the extent that the relevant *thl* Party has not acted in good faith or has engaged in wilful misconduct.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. *thl* receives and holds the benefit of this clause as trustee for each other *thl* Party.

10.3 Deeds of indemnity

- (a) Subject to the Scheme becoming Effective, *thl* undertakes in favour of ATL and each other person who is a current or former officer of the ATL Group that it will:
 - (i) subject to clause 10.3(d), for 7 years from the Implementation Date, ensure that the constitutions of ATL and each other member of the ATL Group continue to

contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in that person's capacity as a director or officer of the company to any person other than a member of the ATL Group; and

- (ii) procure that ATL and each other member of the ATL Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The undertakings contained in clause 10.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (c) ATL receives and holds for the benefit of clause 10.3(a), to the extent it relates to the current or former directors and officers of the ATL Group, as trustee for them.
- (d) The undertakings contained in clause 10.3(a) are given:
 - (i) in the case of clause 10.3(a)(i), until the earlier of 7 years from the Implementation Date or the relevant member of the ATL Group ceasing to be part of the *thl* Group; or
 - (ii) in the case of clause 10.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer or the relevant member of the ATL Group ceasing to be part of the *thl* Group.

10.4 Directors' and officers' insurance

thl acknowledges that ATL will in respect of ATL and all other members of the ATL Group:

- (a) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for ATL and all other members of the ATL Group (**Policy**) to be extended for a further 12 months after consulting in good faith with *thl* regarding the cost and terms of the Policy (including if the cost of the Policy is materially higher than the cost of the Policy currently in effect, consulting in good faith with *thl* regarding possible alternative coverage solutions); and
- (b) prior to the Effective Date, enter into a directors' and officers' run-off insurance policy in respect of the directors and officers of any member of the ATL Group that applies for no less than a 7 year period following the Implementation Date (the **Run-off Policy**) after consulting in good faith with *thl* regarding the cost and terms of the Run-off Policy from a reputable insurer that has a rating that is the same as, or better than, the rating of the insurers for the directors' and officers' insurance policy in place for the current financial year to provide the Run-off Policy on the following basis:
 - (i) the same amount of coverage;
 - (ii) the same deductible or excess; and
 - (iii) otherwise on terms that are no less favourable to the current directors or officers of ATL for the current financial year,

and pay all premiums required so as to ensure that insurance cover is provided under the Run-off Policy on those terms until that date.

10.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, ATL must not:

- (a) vary or cancel the Policy or the Run-off Policy; or
- (b) unless required under the Policy or the Run-off Policy, commit any act or omission that may prejudice any claim by a director or officer of ATL under the Policy or the Run-off Policy.

11. Confidentiality and announcements

11.1 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this deed will prevail over the Confidentiality Deed to the extent of any inconsistency.

11.2 Announcements

- (a) Promptly after the execution of this deed each party must issue their respective Announcement to:
 - (i) in the case of ATL, the ASX; and
 - (ii) in the case of *thl*, the NZX.
- (b) Subject to clause 11.2(c), any further public announcements by either of the parties in relation to, or in connection with, the Scheme may only be made in a form approved by the other party in writing (acting reasonably).
- (c) Where a party is required by law, the ASX Listing Rules or the NZX Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with the Proposed Transaction or any other transaction related to this deed or the Scheme, it may do so to the extent legally required and only then after it has given the other parties as much notice as possible and has consulted in good faith to the fullest extent possible in the circumstances with the other parties.

11.3 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clause 11.2 applies to any such statements or disclosures.

12. Termination

12.1 Termination by notice

- (a) *thl* or ATL may, by notice in writing to the other, terminate this deed at any time prior to the Second Court Date:
 - (i) if the other is in material breach of any of its material obligations under this deed (other than the breaching of a party's respective representations and warranties which are regulated by clause 12.2) and the other party has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
 - (ii) in accordance with clause 3.8;
 - (iii) if the Court refuses to make any order directing ATL to convene the Scheme Meeting, provided that both ATL and *thl* have met and consulted in good faith and either party does not wish to proceed with the Scheme; or
 - (iv) if the Effective Date for the Scheme has not occurred on or before the End Date.
- (b) ATL may, by notice in writing to *thl*, terminate this deed at any time prior to the Delivery Time on the Second Court Date if at any time before then each of that number of ATL Directors as constitutes a majority of the ATL Board publicly recommend a Superior Proposal; and
- (c) *thl* may, by notice in writing to ATL, terminate this deed at any time prior to the Delivery Time on the Second Court Date if at any time before then any ATL Director:
 - (i) does not recommend the Scheme in the manner contemplated by this deed;

- (ii) withdraws or adversely revises or adversely modifies the ATL Director's recommendation of the Scheme (other than the qualifications expressly permitted by clause 5.1);
- (iii) makes a public statement indicating that the ATL Director recommends, endorses or supports a Competing Proposal,

other than as a result of the circumstances described in clause 5.2, which will not extend to any ATL Director adversely revising or adversely modifying the ATL Director's recommendation of the Proposed Transaction as a result of, or making a public statement indicating that they recommend, endorse or support, a Competing Proposal.

12.2 Termination for breach of representations and warranties

- (a) *thl* may, by notice in writing to ATL, terminate this deed at any time prior to the Delivery Time on the Second Court Date if:

- (i) ATL is in material breach of an ATL Warranty; or
- (ii) ATL is in breach of the ATL Warranty in clause 9.4(h),

and ATL has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from *thl* setting out details of the relevant circumstance and requesting ATL to remedy the breach.

- (b) ATL may, by notice in writing to *thl*, terminate this deed at any time prior to the Delivery Time on the Second Court Date if:

- (i) *thl* is in material breach of a *thl* Warranty; or
- (ii) *thl* is in breach of the *thl* Warranty in clause 9.1(r),

and *thl* has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from ATL setting out details of the relevant circumstance and requesting *thl* to remedy the breach.

12.3 Effect of termination

- (a) In the event of termination of this deed under clause 3.8 (Conditions not capable of being fulfilled), 12.1 (Termination by notice) or 12.2 (Termination for breach of representations and warranties), this deed will become void and have no effect, except that the provisions of clauses 9.8 (Survival of representations), 9.9 (Survival of indemnities), 12 (Termination), 13 (Break Fees) and 17.3 to 17.15 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

13. Break Fees

13.1 Background

- (a) ATL and *thl* acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, each of them will incur significant costs including those described in clause 13.2.
- (b) In the circumstances referred to in clause 13.1(a), each party has requested that provision be made for the payments outlined in clauses 13.3 and 13.4, without which they would not have entered into this deed.
- (c) Each party has determined that the Proposed Transaction will provide benefit to *thl*, ATL and the Independent Shareholders and that it is appropriate for the parties to agree to the payments referred to in this clause 13 in order to secure the participation of ATL and *thl* in the Proposed Transaction.

13.2 Costs incurred by the parties

- (a) The fees payable under clauses 13.3 and 13.4 have been calculated to reimburse the relevant party entitled to payment for the following:
- (i) fees for legal and financial advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;
 - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction; and
 - (v) any damage to reputation associated with a failed transaction and the implications of those damages if the relevant party seeks to execute alternative acquisitions in the future,
- in each case, incurred by the relevant parties directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction.
- (b) The parties acknowledge that:
- (i) the amount of fees, costs and losses referred to in this clause 13.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under to a party under clause 13.3 or 13.4 is a genuine and reasonable pre-estimate of those fees, costs and losses (it being acknowledged by the parties that the costs would most likely be in excess of this amount).

13.3 Payment by ATL to *thl*

- (a) ATL agrees to pay to *thl* A\$1,400,000 (inclusive of GST) (**ATL Break Fee**) in any of the following circumstances:
- (i) (**Competing Proposal succeeds**) both of the following occur:
 - (A) a Competing Proposal is publicly announced during the period commencing on the date of this deed and ending on the End Date; and
 - (B) within 12 months from the date of the public announcement of such Competing Proposal:
 - (I) the Competing Proposal is implemented or completed substantially in the terms described in the public announcement; or
 - (II) without limiting clause 13.3(a)(i)(B)(I), the proponent of that Competing Proposal acquires a Relevant Interest in, an economic interest in or voting power of at least 50% of ATL Shares and the Competing Proposal is (or becomes) free of any defeating condition; or
 - (ii) (**Competing Proposal executed**) at any time before termination of this deed, ATL enters into any agreement with a third party in respect of a Competing Proposal under which that third party and ATL agree to undertake or give effect to such Competing Proposal;
 - (iii) (**Change of Recommendation**) at any time prior to the Second Court Date, any director of ATL:
 - (A) withdraws or adversely modifies their recommendation of the Proposed Transaction (other than the qualifications expressly permitted by clause 5.1) or recommends or supports a Competing Proposal;

- (B) does not recommend in the Explanatory Booklet that the Independent Shareholders approve the Scheme; or
- (C) makes any public statement to the effect that the Scheme is not, or is no longer, recommended,

except where this is:

- (D) as a result of the circumstances set out in clause 5.2, which will not extend to any ATL Director adversely revising or adversely modifying the ATL Director's recommendation of the Proposed Transaction as a result of, or making a public statement indicating that they recommend, endorse or support, a Competing Proposal;
 - (E) as a result of the Independent Expert (either in its initial report or any updated, revised or supplemental report) opining that the Scheme is not in the best interests of the Independent Shareholders other than where the reason for that opinion is a Superior Proposal); or
 - (F) in circumstances where ATL is entitled to terminate this deed under clause 12.1(a) or 12.2(b); or
- (iv) **(Material Breach)** *thl* terminates this deed in accordance with (and subject to the cure periods specified in) clause 12.1(a)(i) or 12.2(a).
- (b) ATL must pay *thl* the ATL Break Fee within 10 Business Days of receipt by ATL of a demand for payment from *thl* made after the occurrence of the event referred to in clause 13.3(a).
 - (c) The ATL Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
 - (d) The ATL Break Fee is not payable where:
 - (i) ATL has become entitled to the *thl* Break Fee; or
 - (ii) the Scheme becomes Effective.

13.4 Payment by *thl* to ATL

- (a) *thl* agrees to pay to ATL A\$1,400,000 (inclusive of GST) (***thl* Break Fee**) if:
 - (i) ATL terminates this deed in accordance with clauses 12.1(a)(i) or 12.2(b); or
 - (ii) the Scheme becomes Effective but *thl* does not provide the Scheme Consideration in accordance with the terms and conditions of this deed and the Deed Poll.
- (b) *thl* must pay ATL the *thl* Break Fee within 10 Business Days of receipt by *thl* of a demand for payment from ATL made after the occurrence of the event referred to in clause 13.4(a).
- (c) The *thl* Break Fee is not payable where *thl* has become entitled to the ATL Break Fee.

13.5 Limits on Claims

- (a) Subject to clause 13.5(c), the maximum aggregate amount that:
 - (i) ATL is required to pay in relation to this deed (including any breach of this deed) to *thl* and *thl* Acquirer is the ATL Break Fee and in no event will the aggregate liability of ATL to *thl* and *thl* Acquirer in connection with this deed exceed the amount of the ATL Break Fee; and
 - (ii) *thl* and *thl* Acquirer are required to pay in relation to this deed (including any breach of this deed) to ATL is the *thl* Break Fee and in no event will the aggregate liability of *thl* and *thl* Acquirer in connection with this deed exceed the amount of the *thl* Break Fee.
- (b) Notwithstanding any other clause in this document other than clause 13.5(c), if an amount is paid by:

- (i) ATL under clause 13.3, that amount is received by **thl** in complete settlement of any and all Claims that **thl** may have against ATL in respect of the Scheme or in connection with this deed; and
 - (ii) **thl** under clause 13.4, that amount is received by ATL in complete settlement of any and all Claims that ATL may have against **thl** in respect of the Scheme or in connection with this deed.
- (c) This clause 13.5 does not:
- (i) limit any rights or obligations under the Deed Poll;
 - (ii) limit the liability of a party for fraud or wilful material breach of this deed; or
 - (iii) restrict the ability of a party to seek and obtain the remedy of specific performance.

14. Exclusivity

14.1 No existing discussions

Other than in relation to the discussions with **thl** in connection with the Proposed Transaction, ATL represents and warrants to **thl** that, as at the date of this deed:

- (a) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal; and
- (b) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

14.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of **thl**, ATL must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly:

- (a) solicit, invite, encourage, continue or initiate any Competing Proposal or any enquiries, negotiations or discussions with any third party in relation to, or that may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal or which may otherwise lead to the Proposed Transaction not being completed; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal,

or communicate any intention to do any of those things.

14.3 No talk restriction

Subject to clause 14.5, during the Exclusivity Period, ATL must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, (whether directly or indirectly):

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
- (b) communicate any intention to do any of these things,

in relation to, or that may reasonably be expected to encourage or lead to, an actual or potential Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to encourage or lead to a Competing Proposal or which may otherwise lead to the Proposed Transaction not being completed, even if:

- (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by ATL or any of its Related Bodies Corporate; or
- (d) that person has publicly announced the Competing Proposal.

14.4 No due diligence

- (a) Subject to clause 14.5, during the Exclusivity Period, except with the prior written consent of *thl*, ATL must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:
 - (i) solicit, invite, initiate, or encourage, or (subject to clause 14.5) facilitate or permit, any person (other than *thl*) to undertake due diligence investigations in respect of ATL, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
 - (ii) subject to clause 14.5, make available to any person (other than *thl*) or permit any such person to receive any non-public information relating to ATL, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) If ATL proposes that any non-public information be provided to a third party, then:
 - (i) before ATL provides such information, the third party must enter into an Acceptable Confidentiality Deed (which must not contain any cost reimbursement or break fee provisions in favour of the third party); and
 - (ii) any non-public information provided to that third party must also be provided to *thl* (unless the information has already been provided to *thl* or its Authorised Person).

14.5 Exceptions

Clauses 14.3 and 14.4(a) do not apply to the extent that they restrict ATL or the ATL Board from taking or refusing to take any action with respect to a genuine Competing Proposal (in relation to which there has been no contravention of this clause 14) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the ATL Board considers is of sufficient commercial standing;
- (b) the ATL Board, acting in good faith, determines:
 - (i) where there is a written Competing Proposal, after consultation with its financial advisers, that the Competing Proposal is a Superior Proposal or the steps which the ATL Board proposes to take may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and
 - (ii) after receiving written legal advice from ATL's external legal advisers experienced in transactions of this nature, that failing to respond to the Competing Proposal would be likely to constitute a breach of its fiduciary or statutory duties; and
- (c) ATL notifies promptly and in any event within 48 hours *thl* of each action or inaction by ATL or the ATL Board in reliance on this clause 14.5.

14.6 ATL exclusivity warranty and undertakings

- (a) ATL warrants as at the date of this deed:
 - (i) that it has, and its Authorised Persons have, ceased any existing discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
 - (ii) that it has requested, or will as soon as practicable request, the return of ATL's confidential information in accordance with the terms of any relevant confidentiality agreement from all third parties conducting due diligence investigations on the ATL Group prior to the date of this deed in connection with (or contemplation of) a Competing Proposal or potential Competing Proposal.
- (b) During the Exclusivity Period, ATL must:
 - (i) enforce all its rights under each confidentiality agreement entered into in connection with an actual or potential Competing Proposal (before the date of this

deed), including any standstill obligations and its rights to require the return of confidential information as referred to in clause 14.6(a)(ii);

- (ii) as soon as reasonably practicable, ensure that any electronic data room access granted to any third party prior to the date of this deed in connection with an actual or potential Competing Proposal is withdrawn; and
- (iii) not grant any waivers or agree to any amendments under any confidentiality agreements entered into in connection with an actual or potential Competing Proposal (before the date of this deed).

14.7 Notice of Competing Proposal

- (a) During the Exclusivity Period, ATL must promptly notify *thl* in writing of:
 - (i) any approach, inquiry or proposal made by any person to ATL, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
 - (ii) any request made by any person to ATL, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to ATL, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Competing Proposal,

(Competing Proposal Notice).
- (b) A Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 14.7(a)(i) or who made the relevant request for information referred to in clause 14.7(a)(ii); and
 - (ii) the material terms and conditions (including price, conditions precedent, timetable and any break fee) of any Competing Proposal or any proposed Competing Proposal (to the extent known),

and *thl* agrees that any such information received will constitute “Confidential Information” as defined in the Confidentiality Deed.
- (c) During the Exclusivity Period ATL must also notify *thl* in writing as soon as possible after becoming aware of any material developments in relation to any actual, proposed or potential Competing Proposal, including in respect of any of the information previously notified to *thl* under this clause 14.7.
- (d) For the purposes of this clause 14.7, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

14.8 ATL's response to Competing Proposal and *thl*'s right to respond

- (a) If ATL receives a Competing Proposal and as a result, any ATL Director proposes to either:
 - (i) change, withdraw or modify the ATL Director's recommendation of the Scheme; or
 - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal with the person who has made the applicable Competing Proposal (other than an Acceptable Confidentiality Deed),

ATL must direct each ATL Director not to do so:

 - (iii) unless the Competing Proposal is bona fide; and
 - (iv) until each of the following has occurred:

- (A) ATL has given *thl* written notice (**Relevant Notice**) of the ATL Director's proposal to take the action referred to in clauses 14.8(a)(i) or 14.8(a)(ii) (subject to *thl*'s rights under clause 14.8(b)), including details of the grounds on which the ATL Directors propose to take such action;
 - (B) ATL has given *thl* all information that would be required by clause 14.7(b) (excluding the operation of clause 14.5), including the identity of the person making the Competing Proposal; and
 - (C) either:
 - (I) *thl* has not announced or provided to ATL a Counter Proposal before the Cut Off Date; or
 - (II) *thl* has announced or provided to ATL a Counter Proposal before the Cut Off Date and the ATL Board has determined, in good faith, that the Counter Proposal would not provide an equivalent or superior outcome to ATL Shareholders as a whole compared with the Competing Proposal and *thl* have been given an opportunity to amend the Counter Proposal in accordance with clause 14.8(e).
- (b) If ATL gives a Relevant Notice to *thl* under clause 14.8(a)(iv)(A), *thl* will have the right, but not the obligation, at any time during the 5 Business Days following the receipt of the Relevant Notice (**Cut Off Date**), to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (each a **Counter Proposal**), and if it does so then the ATL Directors must review the Counter Proposal and determine whether, in good faith, the Counter Proposal would provide an equivalent or superior outcome to ATL Shareholders as a whole compared with the Competing Proposal.
 - (c) ATL must procure that the ATL Board promptly, and in any event within 2 Business Days of receiving a Counter Proposal, notifies *thl* of the determination in writing, stating reasons for that determination.
 - (d) If the ATL Directors determine in good faith that the Counter Proposal would provide an equivalent or superior outcome to ATL Shareholders as a whole compared with the Competing Proposal, then ATL and *thl* must use their best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal, and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and ATL must use its best endeavours to procure that the ATL Directors recommend the Counter Proposal to the ATL Shareholders and not recommend the applicable Competing Proposal.
 - (e) If the determination is that the Counter Proposal would not provide an equivalent or superior outcome to ATL Shareholders as a whole compared with the Competing Proposal, then *thl* may take steps to amend the Counter Proposal to address the reasons given within a further period of 5 Business Days. If *thl* does so to ATL's satisfaction, then the process in clauses 14.8(c) and 14.8(d) applies to that amended Counter Proposal.
 - (f) For the purposes of this clause 14.8, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

14.9 Normal provision of information

Nothing in this clause 14 prevents ATL from;

- (a) providing any information required to be provided by any applicable law (including to satisfy its obligations under the ASX Listing Rules), any Governmental Agency, or any court of competent jurisdiction;
- (b) providing any information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business; and

- (c) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers, in the ordinary course of business in accordance with its usual practices.

15. Modification of ATL Break Fee, *thl*/Break Fee or exclusivity arrangements

15.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clause 13 or an exclusivity arrangement under clause 14 is unacceptable or unenforceable; or
- (b) as a result of an application to the Australian Takeovers Panel, the Australian Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the ATL Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 14, it will make a declaration of unacceptable circumstances,

then, subject to clause 15.2:

- (c) the parties must amend clauses 13 and/or 14 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 15.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clauses 15.1(a) or 15.1(b) nor the amendment of clauses 13 and/or 14 will be taken to be a breach of, or permit any party to terminate, this deed.

15.2 No requirement to act unless decision final

The parties are only required to take steps under 15.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) *thl* and ATL agree in writing not to appeal or seek review of the decision to impose that requirement (having consulted in good faith on whether to do so).

15.3 Appeals and review of regulatory decisions

Nothing in this deed requires a party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clause 15.1(a) or 15.1(b). If either *thl* or ATL wishes to appeal or seek review of any such decision then the other party must make submissions in the course of those proceedings supporting the review made by the first party.

15.4 Determination by Governmental Agency

If a Governmental Agency determines that payment of all or any part of the ATL Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the ATL Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of ATL to pay the ATL Break Fee does not apply to the extent of the Impugned Amount; and
- (b) if *thl* has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

16. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be sent to the address for service of the addressee specified in the Details;
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent to the email address, of the addressee, in accordance with the Details; and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) **(in the case of email)** immediately after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, unless that local time is not a Business Day, or is between 5.00pm and midnight on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day. If delivery is between 12.01am and 8.59am local time on a Business Day, then delivery will be deemed to be received at 9.00am on that Business Day; and
 - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day. If delivery is between 12.01am and 8.59am local time on a Business Day, then delivery will be deemed to be received at 9.00am on that Business Day.

17. General

17.1 Further acts

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

17.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties.

17.3 Payments

Unless otherwise provided in this deed, where an amount is required to be paid to a party (**Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

17.4 Interest

- (a) If a party fails to pay any amount payable under this deed on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.

- (b) The interest payable under clause 17.4(a):
 - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

17.5 GST

- (a) Any reference in this clause 17.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 17.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.5(c) does not apply to any taxable supply under or in connection with this deed that is stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

17.6 Stamp duty

thl must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Scheme).

17.7 Expenses

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Explanatory Booklet and the proposed, attempted or actual implementation of this deed and the Scheme.

17.8 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

17.9 Assignment

- (a) Subject to clause 17.9(b) below, a party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.
- (b) *thl* may assign, grant a security interest over, novate or otherwise transfer by way of security, any of its rights or obligations under this deed to a financier or financiers (or a security agent or security trustee thereof).

17.10 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

17.11 Counterparts and electronic execution

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 16, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.
- (d) A party may sign electronically a soft copy of this deed through DocuSign or other electronic means and bind itself accordingly. That will satisfy any statutory or other requirements for it to be in writing and signed by that party. Any soft copy so signed will constitute an executed original counterpart. In addition, it is intended to print it out when so signed, so that the relevant signatures will appear in the printout, and any printout will also be an executed original counterpart.

17.12 Entire agreement

- (a) This deed (including the Scheme and the Deed Poll):
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 17.12(a), the Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this deed prevails.

17.13 No representation or reliance

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

17.14 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

17.15 Governing law and jurisdiction

- (a) This deed is governed by and will be construed according to the laws of Queensland.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts with jurisdiction in Queensland and of the courts competent to determine appeals from those courts and waive any right to object to the venue on any ground.

Schedule 1 – Indicative timetable

Event	Date
Enter into Scheme Implementation Deed	10 December 2021
Lodge Explanatory Booklet with ASIC and ASX for review and comment	Q3 FY2022
First Court Date	Q3 FY2022
Explanatory Booklet registered by ASIC	Q3 FY2022
Dispatch Explanatory Booklet to Independent Shareholders	Q3 FY2022
Scheme Meeting	Q3 FY2022
Second Court Date	Q4 FY2022
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Q4 FY2022
Scheme Record Date	Q4 FY2022
Implementation Date	Q4 FY2022

Schedule 2 – Scheme

Scheme of Arrangement

Apollo Tourism & Leisure Ltd ABN 67 614 714 742

—

Scheme Shareholders

—

Scheme of Arrangement

Apollo Tourism & Leisure Ltd ABN 67 614 714 742

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Details

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth).

Between the parties

Apollo Tourism & Leisure Ltd ABN 67 614 714 742 of 698 Nudgee Road, Northgate QLD 4013, Australia (**ATL**)

and

Each Scheme Shareholder

Agreed terms

1. Defined terms & interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

ACCC means the Australian Competition and Consumer Commission.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691, or as the context requires or permits, the financial market known as the Australian Securities Exchange operated by it.

ASX Listing Rules means the official listing rules of ASX as amended from time to time.

ATL Register means the register of shareholders maintained by ATL under section 168(1) of the Corporations Act.

ATL Share means an issued fully paid ordinary share in the capital of ATL.

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

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Brisbane, Queensland, Australia or Auckland, New Zealand.

CHESS means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited ABN 49 008 504 532.

CHESS Holding has the meaning given in the Settlement Rules.

Commerce Commission means the New Zealand Commerce Commission.

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

Court means the Supreme Court of Queensland or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Delivery Time means, in relation to the Second Court Date, two hours before the commencement of the hearing or, if the commencement of the hearing is adjourned, two hours before the commencement of the adjourned hearing, of the Court to approve this Scheme in accordance with section 411(4)(b) of the Corporations Act.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

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

End Date means the 'End Date' determined in accordance with the Scheme Implementation Deed.

FIRB means the Australian Foreign Investment Review Board.

Foreign Scheme Shareholder means a Scheme Shareholder whose address as shown in the ATL Register (as at the Scheme Record Date) is located outside of:

- (a) Australia or its external territories;
- (b) New Zealand;
- (c) United Kingdom; and
- (d) any other jurisdictions as may be agreed in writing by ATL and *thl*,

unless *thl* determines (in its absolute discretion), that *thl* is permitted to allot and issue *thl* Consideration Shares to that Scheme Shareholder under this Scheme by the laws of that place either unconditionally or after compliance with conditions that *thl* considers are not unduly onerous or impracticable.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, FIRB, ACCC, the Australian Takeovers Panel, Financial Markets Authority, NZX, Commerce Commission, NZ Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

Implementation Date means, with respect to the Scheme, the later of:

- (a) the fifth Business Day following the Scheme Record Date (as relevant); and
- (b) such other Business Day as the parties agree.

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

Market Integrity Rules means any rules made by ASIC under section 798G of the Corporations Act that apply to ASX or any other prescribed financial market on which ATL Shares are quoted.

NZ Takeovers Panel means the Takeovers Panel established by section 5(1) of the *Takeovers Act 1993* (NZ).

NZX means, where the context requires, NZX Limited (Co. No. 1266120) or NZX Regulation Limited (Co. No. 8072017) and, where the context requires, the main board financial market that these entities operate.

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between ATL and the Scheme Shareholders, subject to any alterations or conditions that are:

- (a) agreed to in writing by ATL and *thl* and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by ATL and *thl*.

Scheme Consideration means means 1 *thl* Consideration Share per 3.680818 Scheme Shares.

Scheme Deed Poll means the deed poll dated [*insert*] executed by *thl* and *thl* Acquirer under which *thl* and *thl* Acquirer among other things covenant in favour of the Scheme Shareholders to perform the actions attributed to them respectively under this Scheme, including, in the case of *thl*, providing the Scheme Consideration.

Scheme Implementation Deed means the Scheme Implementation Deed dated [*insert*] between *thl*, *thl* Acquirer and ATL.

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

Scheme Record Date means 7.00pm on the second Business Day (or such other Business Day as *thl* and ATL agree in writing) after the Effective Date.

Scheme Share means an ATL Share on issue as at the Scheme Record Date, other than an ATL Share held by a *thl* Entity.

Scheme Shareholder means a person who holds one or more Scheme Shares.

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

Settlement Rules means the ASX Settlement Operating Rules.

thl means Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited (Co. No. 248179).

thl Acquirer means THL Group (Australia) Pty. Ltd. ACN 055 966 222.

thl Consideration Share means a **thl** Share to be issued under the terms of the Scheme as Scheme Consideration.

thl Entities means:

- (a) **thl**; and
- (b) any other entity that is Controlled by **thl** that holds ATL Shares.

1.2 Interpretation

In this Scheme, except where the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause is a reference to a clause of this Scheme;
- (f) a reference to an **agreement** or **document** (including a reference to this Scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Scheme or that other agreement or document, and includes, except to the extent this Scheme expressly provides otherwise the recitals, schedules and annexures to that agreement or document;
- (g) a reference to a party to this Scheme or an agreement or document includes the party's executors, administrators, successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (i) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (j) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (k) a reference to **dollars** or **\$** is to Australian currency;
- (l) all references to time are to Brisbane, Queensland, Australia time;
- (m) mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included;
- (n) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act; and
- (o) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Business Day

Where the day on or by which any act, matter or thing under this Scheme is to be done is not a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.5 Listing requirements included as law

A listing rule or operating rule of a financial market and a Market Integrity Rule will be regarded as a law and a reference to legislation (as appropriate), and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

2. Preliminary

2.1 ATL

- (a) ATL is a public company limited by shares, registered in Queensland and admitted to the official list of ASX.
- (b) The ATL Shares are officially quoted on ASX. As at the date of the Scheme Implementation Deed, 186,150,908 ATL Shares were on issue and officially quoted on ASX.

2.2 *thl*

thl is a public company limited by shares, registered in New Zealand and admitted to the official list of NZX.

2.3 *thl* Acquirer

thl Acquirer is a proprietary company limited by shares, incorporated in Australia and registered in New South Wales.

2.4 General

- (a) *thl*, *thl* Acquirer and ATL have agreed by executing the Scheme Implementation Deed to implement this Scheme subject to the terms and conditions of this Scheme.
- (b) This Scheme attributes actions to *thl* and *thl* Acquirer but does not itself impose an obligation on them to perform those actions, as neither *thl* nor *thl* Acquirer are parties to this Scheme. *thl* and *thl* Acquirer have agreed, by executing the Scheme Deed Poll, to perform the actions attributed to each of them under this Scheme (including the provision of the Scheme Consideration to the Scheme Shareholders subject to the terms and conditions of this Scheme).

2.5 Consequence of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to *thl* Acquirer, *thl* will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme; and
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to *thl* Acquirer on the Implementation Date, and ATL will enter the name of *thl* Acquirer in the Share Register as the holder of the Scheme Shares with the result that ATL will become a subsidiary of *thl* Acquirer.

3. Conditions

- (a) This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:
 - (i) all the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the conditions in clauses 3.1(o) (Court approval) and 3.1(p) (Order lodged with ASIC) of the Scheme Implementation Deed) having been satisfied or

waived in accordance with the terms of the Scheme Implementation Deed by no later than the Delivery Time on the Second Court Date;

- (ii) neither the Scheme Implementation Deed nor the Scheme Deed Poll having been terminated in accordance with their terms as at the Delivery Time on the Second Court Date;
 - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by *thl, thl* Acquirer and ATL and an office copy of the Court order approving the Scheme under section 411(4)(b) of the Corporations Act is lodged with ASIC;
 - (iv) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are agreed to in writing by *thl, thl* Acquirer and ATL; and
 - (v) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(10) of the Corporations Act, on or before the End Date (or any later date that *thl, thl* Acquirer and ATL agree in writing).
- (b) The satisfaction of the conditions referred to in clause 3(a) of this document is a condition precedent to the operation of clauses 4.2 and 5.

4. Implementation

4.1 Lodgement of Court orders

Subject to the ASX Listing Rules and all conditions precedent in clause 3(a) of this document (other than the condition precedent in clause 3(a)(v)) being satisfied, ATL must lodge with ASIC office copies of any Court orders under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving this Scheme as soon as reasonably practicable after the Court approves this Scheme and in any event no later than by 5.00pm on the first Business Day after the Court approves this Scheme or such later time as *thl* and ATL agree in writing.

4.2 Transfer of Scheme Shares

On the Implementation Date, subject to the provision of the Scheme Consideration for the Scheme Shares by *thl*, and *thl* confirming in writing to ATL by no later than 12 noon (or such later time as *thl, thl* Acquirer and ATL may agree) on the Implementation Date that the *thl* Consideration Shares have been provided, in the manner contemplated by clause 5.3(a):

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to *thl* Acquirer, without the need for any further act by any Scheme Shareholder (other than acts performed by ATL or its officers as agent and attorney of the Scheme Shareholders under clause 8.6 or otherwise), by:
 - (i) ATL delivering to *thl* Acquirer a duly completed and executed share transfer form to transfer all the Scheme Shares to *thl* Acquirer, executed on behalf of the Scheme Shareholders by ATL (or any of its officers) as agent and attorney of the Scheme Shareholders; and
 - (ii) *thl* Acquirer duly executing such transfer form and delivering it to ATL for registration; and
- (b) immediately after receipt of the transfer form in accordance with clause 4.2(a)(ii), ATL must enter, or procure the entry of, the name of *thl* Acquirer in the Share Register in respect of the Scheme Shares transferred to *thl* Acquirer in accordance with this Scheme.

5. Scheme Consideration

5.1 Amount of Scheme Consideration

Subject to clause 5.2, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of the Scheme Shares held by the Scheme Shareholder.

5.2 Foreign Scheme Shareholders

thl and *thl* Acquirer have no obligation to issue (or procure the issue), and must not issue, any *thl* Consideration Shares to Foreign Scheme Shareholders, and instead:

- (a) *thl* will issue the *thl* Consideration Shares that would otherwise have been issued to the Foreign Scheme Shareholders to a nominee appointed by *thl*,
- (b) *thl* will procure that, as soon as reasonably practicable after the Implementation Date (and, in any event, not more than 15 Business Days after the Implementation Date), the nominee:
 - (i) sells, or procures the sale, of those *thl* Consideration Shares on-market and in the ordinary course of trading on NZX in such manner, at such price and on such other terms as the nominee determines in good faith; and
 - (ii) remits the proceeds from that sale (after deducting any brokerage, duty and other selling costs, taxes and charges) to *thl*, and
- (c) as soon as practicable after the last sale of *thl* Consideration Shares in accordance with clause 5.2(a) and remittance of the proceeds of that sale in accordance with clause 5.2(b), *thl* will pay the proceeds it receives to the Foreign Scheme Shareholders in accordance with their entitlement in full satisfaction of the Foreign Scheme Shareholders' entitlement to the relevant *thl* Consideration Shares. No assurances are or will be given to Foreign Scheme Shareholders as to the price that will be achieved for the sale of *thl* Consideration Shares in accordance with this clause and the sale of the *thl* Consideration Shares will be at the risk of the Foreign Scheme Shareholder.

5.3 Provision of Scheme Consideration

- (a) *thl* must before 12 noon (or such later time as *thl* and ATL may agree) on the Implementation Date provide the Scheme Consideration in accordance with this Scheme by procuring that the name of each Scheme Shareholder entitled to receive *thl* Consideration Shares under this Scheme is entered in *thl*'s register of members as the holder of those *thl* Consideration Shares (having the same holding name and address and other details as the holding of the relevant Scheme Shares).
- (b) On or before the date that is five Business Days after the Implementation Date, *thl* must send or procure the sending of a share certificate or holding statement (or equivalent document) to each Scheme Shareholder entitled to receive *thl* Consideration Shares under this Scheme, reflecting the issue of such *thl* Consideration Shares.

5.4 Foreign resident capital gains withholding

- (a) If *thl* determines (acting reasonably), having regard to advice from a qualified tax advisor, that *thl* is either:
 - (i) required by law to withhold an issue of *thl* Consideration Shares (or a combination) to a Scheme Shareholder; or
 - (ii) liable to pay an amount to the Commissioner of Taxation under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) in respect of the acquisition of Scheme Shares from a Scheme Shareholder,(either of the above being the **Relevant Amount**),

then *thl* is entitled to reduce the number of *thl* Consideration Shares issued by a number calculated by the following factor, RA/VS, rounded up to the nearest whole number of *thl* Consideration Shares, where:

- (A) **RA** means the Relevant Amount; and
- (B) **VS** means the value (as reasonably assessed by *thl*) of one *thl* Consideration Shares; and

and issue of the reduced number of *thl* Consideration Shares and payment of the Relevant Amount to the relevant taxation authority pursuant to clause 5.4(b) shall be taken to be full payment of the Relevant Amount for the purposes of this Scheme, including clause 5.3.

- (b) *thl* must pay any Relevant Amount so withheld to the relevant taxation authority within the time permitted by law, and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such payment to the relevant Scheme Shareholder.

5.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any *thl* Consideration Shares comprised in the Scheme Consideration are to be registered in the names of the joint holders; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date or to the joint holders.

5.6 Fractional entitlements

- (a) Any fractional entitlement of the Scheme Shareholder to a part of a *thl* Consideration Share will be rounded as follows:
 - (i) if the fractional entitlement is less than 0.5, it will be rounded down to zero *thl* Consideration Shares; and
 - (ii) if the fractional entitlement is equal to or more than 0.5, it will be rounded up to one *thl* Consideration Shares.
- (b) If *thl* is of the reasonable opinion that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.6) have, before the Scheme Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding or shareholding splitting or division, *thl* may give notice to those Scheme Shareholders:
 - (i) setting out their names and addresses as shown in the ATL Register as at the Scheme Record Date;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and addresses as set out in the ATL Register on the Scheme Record Date are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. *thl*, in complying with the other provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Scheme.

5.7 Status of *thl* Consideration Shares

Subject to this Scheme becoming Effective, *thl* must:

- (a) in accordance with the Deed Poll, issue the *thl* Consideration Shares to the Scheme Shareholders in accordance with the Scheme on terms that each *thl* Consideration Share will rank equally in all respects with each other *thl* Share then on issue;
- (b) ensure that on issue each *thl* Consideration Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of *thl*); and
- (c) do everything reasonably necessary to ensure that trading in the *thl* Consideration Shares commences on NZX and ASX on a normal trading basis by the Implementation Date or as soon as practicable thereafter.

5.8 Definition of *sending*

For the purposes of clause 5, the expression *sending* means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the address of that Scheme Shareholder as set out in the ATL Register at the Scheme Record Date; or
- (b) delivery to the address of that Scheme Shareholder as set out in the ATL Register at the Scheme Record Date by any other means at no cost to the recipient.

6. Dealings in Scheme Shares

6.1 Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Share Register as the holder of the relevant Scheme Shares on or before 7.00pm on the Scheme Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before 5.00pm on the day on which the Scheme Record Date occurs at the place where the Share Register is kept,

and ATL will not accept for registration, nor recognise for any purpose (except a transfer to *thl* Acquirer under this Scheme and any subsequent transfer by *thl* Acquirer or its successors in title or by the *thl* Entities), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) **(Registration of transfers)** ATL must register registrable transmission applications or transfers of the kind referred to in clause 6.1(b) by or as soon as reasonably practicable after the Scheme Record Date.
- (b) **(No registration after Scheme Record Date)** ATL will not accept for registration or recognise for any purpose any transmission application or transfer in respect of ATL Shares received after 5.00pm on the day on which the Scheme Record Date occurs, other than to *thl* Acquirer in accordance with this Scheme and any subsequent transfer by *thl* Acquirer or its successors in title or by the *thl* Entities.
- (c) **(Maintenance of Share Register)** For the purpose of determining entitlements to the Scheme Consideration, ATL must maintain the Share Register in accordance with the provisions of this clause until the Scheme Consideration has been delivered to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) **(No disposal after Scheme Record Date)** From the Scheme Record Date until registration of *thl* Acquirer in respect of all Scheme Shares under clause 4, no Scheme Shareholder may dispose or otherwise deal with Scheme Shares (or purport to do so) in any way except as set out in this Scheme and any attempt to do so will have no effect and ATL shall be entitled to disregard any such disposal or dealing.
- (e) **(Statements of holding from Scheme Record Date)** All statements of holding for ATL Shares will cease to have effect from the Scheme Record Date as documents of title in respect of those shares. As from the Scheme Record Date, each entry current at that date on the Share Register (other than entries in respect of the *thl* Entities) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the ATL Shares relating to that entry.
- (f) **(Provision of Scheme Shareholder details)** As soon as practicable on or after the Scheme Record Date and in any event within one Business Day after the Scheme Record

Date, ATL will ensure that details of the names, addresses set out in the ATL Register at the Scheme Record Date and holdings of ATL Shares for each Scheme Shareholder are available to *thl* Acquirer in the form *thl* Acquirer reasonably requires.

7. Suspension and delisting

- (a) ATL will apply to ASX to suspend trading on the ASX in ATL Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by ATL, and to take effect only after the transfer of the Scheme Shares has been registered in accordance with clause 4.2(b), ATL will apply:
 - (i) for termination of the official quotation of ATL Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

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

- (a) ATL may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which ATL has consented in writing; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel or the solicitors for ATL have consented.

8.2 Binding effect of Scheme

This Scheme binds ATL and all Scheme Shareholders (including those who did not attend the Scheme Meeting, those who did not vote at that meeting, or voted against this Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of ATL.

8.3 Scheme Shareholders' agreements and acknowledgment

Each Scheme Shareholder:

- (a) acknowledges the binding effect of the Scheme as described in clause 8.2;
- (b) agrees to the transfer of their ATL Shares together with all rights and entitlements attaching to those ATL Shares in accordance with this Scheme;
- (c) who holds their ATL Shares in a CHESS Holding agrees to the conversion of those ATL Shares to an Issuer Sponsored Holding and irrevocably authorises ATL to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (d) agrees to any variation, cancellation or modification of the rights attached to their ATL Shares constituted by or resulting from this Scheme;
- (e) agrees to, on the direction of *thl*, destroy any holding statements or share certificates relating to their ATL Shares;
- (f) agrees to become a shareholder of *thl*, have their name and address entered in *thl*'s register of members (and other details as the holding of the relevant Scheme Shares), and to be bound by its constitution; and
- (g) acknowledges and agrees that this Scheme binds ATL and all Scheme Shareholders (including those who did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting).

8.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to ATL, in its own right and for the benefit of *thl* and *thl* Acquirer (and is deemed to have authorised ATL to give such

warranties to **thl** and **thl** Acquirer in accordance with clause 8.4(b)), that as at the Implementation Date:

- (i) all of its Scheme Shares which are transferred to **thl** Acquirer under this Scheme, including any rights and entitlements attaching to those Scheme Shares, will, at the time of transfer, be free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any “security interests” within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
 - (ii) all of its ATL Shares which are transferred to **thl** Acquirer under this Scheme will, on the date on which they are transferred to **thl** Acquirer, be fully paid;
 - (iii) it has full power and capacity to transfer its ATL Shares to **thl** Acquirer together with any rights attaching to those shares; and
 - (iv) it has no existing right to be issued any ATL Shares, options exercisable into ATL shares, ATL convertible notes or any other ATL securities.
- (b) ATL undertakes that it will provide the warranties in clause 8.4(a) to **thl** and **thl** Acquirer as agent and attorney of each Scheme Shareholder.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any “security interests” within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) On and from the Implementation Date, subject to the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5.3(a), **thl** Acquirer will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by ATL of **thl** Acquirer in the Share Register as the holder of the Scheme Shares.

8.6 Authority given to ATL

- (a) Scheme Shareholders will be deemed to have authorised ATL to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary for or incidental to the implementation of this Scheme, including executing and delivering, as agent and attorney of each Scheme Shareholder:
- (i) a share transfer or transfers in relation to Scheme Shares as contemplated by clause 4.2; and
 - (ii) any deed or document required by **thl** or ATL that causes each Scheme Shareholder entitled to **thl** Consideration Shares to be bound by the constitution of **thl**.
- (b) Each Scheme Shareholder, without the need for any further act, irrevocably appoints ATL and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
- (i) on the Effective Date, enforcing the Scheme Deed Poll against **thl** and **thl** Acquirer and ATL accepts such appointment; and
 - (ii) on the Implementation Date, executing any document necessary to give effect to this Scheme including, a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,
- and ATL accepts such appointment.

8.7 Appointment of sole proxy

Immediately after the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clauses 5.3(a) until ATL registers *thl* Acquirer as the holder of all ATL Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed *thl* Acquirer as its attorney and agent (and directed *thl* Acquirer in such capacity) to appoint an officer or agent nominated by *thl* Acquirer as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of ATL, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolution;
- (b) undertakes not to otherwise attend Shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to clause 8.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as *thl* Acquirer reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), *thl* Acquirer and any officer or agent nominated by *thl* Acquirer under clause 8.7(a) may act in the best interests of *thl* Acquirer as the intended registered holder of the Scheme Shares.

8.8 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Governmental Agency), all instructions, notifications or elections by a Scheme Shareholder to ATL binding or deemed binding between the Scheme Shareholder and ATL relating to ATL or ATL Shares (including any email addresses, instructions relating to communications from ATL, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from ATL) will be deemed from the Implementation Date (except to the extent determined otherwise by *thl* and in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to *thl*, and will be accepted by *thl* until that instruction, notification or election is revoked or amended in writing addressed to *thl* at the relevant registry, provided that any such instructions or notifications accepted by *thl* will apply to and in respect of the issue of *thl* Consideration Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

9. General

9.1 Stamp duty

thl or *thl* Acquirer must pay all stamp duty payable in connection with the transfer of the Scheme Shares to *thl* Acquirer pursuant to this Scheme.

9.2 Notices

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

9.3 Further assurances

- (a) ATL must do anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder consents to ATL doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it.

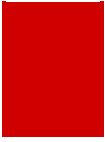
9.4 Governing law and jurisdiction

- (a) This Scheme is governed by the laws of Queensland.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme.

9.5 No liability when acting in good faith

None of *thl*, *thl* Acquirer or ATL nor any of their directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Scheme Deed Poll in good faith.

Schedule 3 – Deed Poll



Deed poll

relating to a proposed scheme of arrangement between
Apollo Tourism & Leisure Ltd ABN 67 614 742 and its
members

—

Tourism Holdings Rentals Limited ARBN 655 142
028, a foreign company registered in its original
jurisdiction of New Zealand as Tourism Holdings
Limited (**thl**)
THL Group (Australia) Pty. Ltd. (**thl Acquirer**)

—

Deed poll

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Details

Date

Parties

Name **Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited (Co. No. 248179)**

Country of incorporation New Zealand

NZBN 9429039926081

Short form name ***thl***

Notice details Level 1, 83 Beach Street, Auckland City, Auckland 1140, New Zealand

Email: grant.webster@thlonline.com

Attention: Grant Webster

Name **THL Group (Australia) Pty. Ltd. ACN 055 966 222**

Country of incorporation Australia

ABN 68 055 966 222

Short form name ***thl Acquirer***

Notice details Level 1, 83 Beach Street, Auckland City, Auckland 1140, New Zealand

Email: grant.webster@thlonline.com

Attention: Grant Webster

Background

- A On *[insert]*, *thl*, *thl Acquirer* and ATL entered into the Scheme Implementation Deed to provide for (among other matters) the implementation of the Scheme.
- B The effect of the Scheme will be to transfer all Scheme Shares to *thl Acquirer* in return for the Scheme Consideration.
- C *thl* and *thl Acquirer* enter this deed poll to covenant in favour of Scheme Shareholders to perform the actions attributed to each of them under the Scheme.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Scheme Implementation Deed means the Scheme Implementation Deed dated [*insert*] between *thl*, *thl* Acquirer and ATL.

ATL means Apollo Tourism & Leisure Ltd ACN 614 714 742 as trustee for the Scheme Shareholders.

1.2 Terms defined in Scheme Implementation Agreement

Words and phrases defined in the Scheme Implementation Deed have the same meaning in this deed poll unless the context requires otherwise.

1.3 Incorporation by reference

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme Implementation Deed form part of this deed poll as if set out at length in this deed poll but with *deed poll* substituted for *deed* and with any reference to *party* being taken to include the Scheme Shareholders (as the context requires or permits).

2. Nature of this deed poll

This deed poll is given jointly and severally by *thl* and *thl* Acquirer in favour of the Scheme Shareholders and *thl* and *thl* Acquirer each agree that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it.

3. Conditions precedent and termination

3.1 Conditions

The obligations of *thl* and *thl* Acquirer under this deed poll are subject to the Scheme becoming Effective.

3.2 Termination

This deed poll and the obligations of *thl* and *thl* Acquirer under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective on or before the End Date or any later date as the Court, with the consent of *thl*, *thl* Acquirer and ATL, may order,

unless *thl*, *thl* Acquirer and ATL otherwise agree in writing.

3.3 Consequences of termination

If this deed poll terminates under clause 3.2, in addition and without prejudice to any other rights, powers or remedies available to Scheme Shareholders:

- (a) *thl* and *thl* Acquirer are released from their obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against *thl* and *thl* Acquirer in respect of any breach of this deed poll which occurred before it terminated.

4. Performance of obligations

4.1 Generally

Subject to clause 3, *thl* and *thl* Acquirer covenants in favour of Scheme Shareholders to perform the actions attributed to it under, and otherwise comply with, the Scheme as if *thl* and *thl* Acquirer were parties to the Scheme.

4.2 Provision of Scheme Consideration

- (a) Subject to clause 3, *thl* undertakes in favour of each Scheme Shareholder to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.
- (b) The obligations of *thl* Acquirer under clause 4.2(a) will be satisfied if, in respect of the Scheme Consideration:
 - (i) no later than 12.00 noon (or such later time as *thl*, *thl* Acquirer and ATL may agree) on the Implementation Date, *thl* procures that the name of each Scheme Shareholder entitled to receive *thl* Consideration Shares under the Scheme is entered in *thl*'s register of members as the holder of those *thl* Consideration Shares (having the same holding name and address and other details as the holding of the relevant Scheme Shares) and *thl* provides ATL with written confirmation that *thl* has done so; and
 - (ii) on or before the date that is five Business Days after the Implementation Date, *thl* sends or procures the sending of a share certificate or holding statement (or equivalent document) to each Scheme Shareholder entitled to receive *thl* Consideration Shares under the Scheme, reflecting the issue of such *thl* Consideration Shares,

in each case, in accordance with, and subject to, the provisions of the Scheme.

4.3 *thl* Consideration Shares to rank equally

thl undertakes in favour of each Scheme Shareholder that all *thl* Consideration Shares issued as Scheme Consideration to each Scheme Shareholder will, upon their issue:

- (a) rank equally with all other *thl* ordinary shares on issue; and
- (b) be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of *thl*).

5. Warranties

thl and *thl* Acquirer each represent and warrant to each Scheme Shareholder that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)** this deed poll is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document which is binding on it or its assets; and

- (f) (**solvency**) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

6. Continuing Obligations

6.1 Deed poll irrevocable

This deed poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) *thl* and *thl* Acquirer having fully performed its obligations under this deed poll; and
- (b) termination of this deed poll under clause 3.2.

6.2 Variation

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

- (a) before the Second Court Date, the variation or amendment is agreed to in writing by ATL (on behalf of each Scheme Shareholder but without the need for to refer the variation or amendment to any Scheme Shareholder) and, if required, approved by the Court; or
- (b) on or after the Second Court Date, the variation or amendment is agreed to in writing by ATL (on behalf of each Scheme Shareholder but without the need for to refer the variation or amendment to any Scheme Shareholder) and is approved by the Court,

and *thl* and *thl* Acquirer enter into a further deed poll in favour of each Scheme Shareholder giving effect to the variation or amendment.

7. Notices

Any notice, demand or other communication (a **Notice**) to *thl* or *thl* Acquirer in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, email or to the address or email address specified in the Details;
- (c) will be conclusively taken to be duly given or made:
 - (i) (**in the case of delivery in hand**), when delivered at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or is made after 5.00pm on a Business Day, in which case that Notice will be deemed to be received at 9.00am on the next Business Day;
 - (ii) (**in the case of delivery by post**), on the third Business Day after the date of posting (if posted to an address within Australia) or the fifth Business Day after the date of posting (if posted to an address outside Australia); or
 - (iii) (**in the case of email**), on the earlier of:
 - (A) when the sending party's email system confirms delivery of the email by way of a delivery notification; or
 - (B) when the recipient party confirms receipt to the sending party via email or telephone.

8. General Provisions

8.1 Assignment

- (a) The rights and obligations of *thl*, *thl* Acquirer, ATL and each Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of *thl*, *thl* Acquirer and ATL.
- (b) Any purported dealing in contravention of clause 8.1(a) is invalid.

8.2 Cumulative rights

The rights, powers and remedies of *thl*, *thl* Acquirer, ATL and each Scheme Shareholder under this deed poll are cumulative with and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

8.3 No waiver

- (a) *thl* or *thl* Acquirer may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.
- (c) No Scheme Shareholder may rely on words or conduct of *thl* or *thl* Acquirer as a waiver of any right unless the waiver is in writing and signed by *thl* or *thl* Acquirer.
- (d) The meanings of the terms used in this clause 8.4 are set out below.

conduct includes delay in the exercise of a right.

right means any right arising under or in connection with this deed poll and includes the right to rely on this clause.

waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

8.4 Stamp duty

thl must:

- (a) must pay or procure the payment of all stamp duty (if any) any related fines, penalties and interest in respect of the Scheme and this deed poll (including the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this deed poll and each transaction effected by or made under or pursuant to the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from a failure to comply with clause 8.4(a).

8.5 Further assurances

thl and *thl* Acquirer must, at their own expense, do all things reasonably required of them to give full effect to this deed poll.

8.6 Governing law and jurisdiction

- (a) This deed poll is governed by and will be construed according to the laws of Queensland.
- (b) *thl* and *thl* Acquirer irrevocably submit to the non-exclusive jurisdiction of the courts with jurisdiction in Queensland and of the courts competent to determine appeals from those courts and waive any right to object to the venue on any ground.

Signing page

EXECUTED and delivered as a deed poll.

**Executed by Tourism Holdings Rentals Limited
ARBN 655 142 028, a foreign company
registered in its original jurisdiction of New
Zealand as Tourism Holdings Limited** in
accordance with section 180 of the *Companies Act
1993*

Signature of director

Name of director (print)

Signature of director

Name of director (print)

Executed by THL Group (Australia) Pty. Ltd. in
accordance with Section 127 of the *Corporations
Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)


By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Signing page

EXECUTED as a deed.

Executed by Apollo Tourism & Leisure Ltd in accordance with Section 127 of the Corporations Act 2001


Signature of director


Signature of director/~~company secretary~~
(Please delete as applicable)

SOPHIA ADELE MITCHELL
Name of director (print)

JAMES BRETT LOCHRAN HEADING
Name of director/~~company secretary~~ (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by Tourism Holdings Rentals Limited ARBN 655 142 028, a foreign company registered in its original jurisdiction of New Zealand as Tourism Holdings Limited in accordance with section 180 of the Companies Act 1993


Signature of director

Robert Campbell

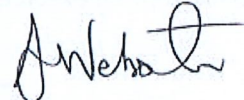
Name of director (print)


Signature of director

Cathy Quinn

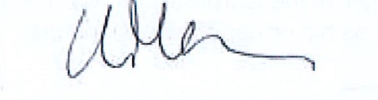
Name of director (print)

Executed by THL Group (Australia) Pty. Ltd. in accordance with Section 127 of the Corporations Act 2001


Signature of director

Grant Webster

Name of director (print)


Signature of director/~~company secretary~~
(Please delete as applicable)

Kate Meldrum

Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.