

THIS DEED OF COMPANY ARRANGEMENT is made the 2nd day of May 2002 and varied the 31<sup>st</sup> day of August 2006 pursuant to the provisions of Part 5.3A of the Corporations Act.

**BETWEEN:**

**[EACH ANSETT GROUP COMPANY (EACH SUBJECT TO A DEED OF COMPANY ARRANGEMENT) OTHER THAN ANSETT AUSTRALIA LIMITED (ACN 004 209 410) (SUBJECT TO DEED OF COMPANY ARRANGEMENT)]** (“Company”)

**EACH ACKNOWLEDGING ANSETT GROUP COMPANY**

**MARK FRANCIS XAVIER MENTHA and MARK ANTHONY KORDA** in their capacity as Voluntary Administrators of the Company

**AND**

**MARK FRANCIS XAVIER MENTHA and MARK ANTHONY KORDA** in their capacity as Deed Administrators of the Company

**RECITALS:**

- A Mark Anthony Korda and Mark Francis Xavier Mentha were appointed administrators of the Ansett Group Companies pursuant to an order of the Court on either 17 September or 3 October 2001, as the case may be, ~~which appointment subsists today~~. This appointment followed the resignation of Messrs. Hall, Hedge and Watson as administrators of the Ansett Group Companies.
- B A meeting of creditors of the Company was convened pursuant to Section 439A of the Act and held on 29 January 2002 (“**Meeting**”). At the Meeting, the creditors of the Company resolved inter alia to adjourn the Meeting to a later date on which they would consider whether it would be in the creditors’ interests for the Company to execute a deed of company arrangement, for the administration to end or for the Company to be wound up.

- C The adjourned Meeting was held on 27 March 2002 (“**Reconvened Meeting**”). The creditors of the Company voting at the Reconvened Meeting resolved (“**Section 439C Resolution**”) that the Company execute a deed of company arrangement in accordance with the outline contained in the statement pursuant to Section 439A(4)(c) of the Act subject to certain amendments.
- D On 17 April 2002, in Federal Court proceeding no. V3062 of 2002, the Court ordered that the time by which the Voluntary Administrators must execute the deed of company arrangement pursuant to Section 444B(2)(b) be extended to 24 April 2002. (A copy of this order is Exhibit 5).
- E On 24 April 2002, in Federal Court proceeding no. V3065 of 2002, the Court reserved its judgment on an application for a further extension of the time by which the Voluntary Administrators must execute the deed of company arrangement pursuant to Sections 444B(2)(b) and 447A of the Act. As a result of the orders made by the Court on 24 and 29 April 2002 (copies of which are Exhibit 6), the deed of company arrangement ~~must~~ had to be executed by midnight on 2 May 2002.
- F A primary objective of the deed of company arrangement as outlined to creditors in the Section 439A(4)(c) statement dated 15 March 2002 and approved by the Company’s creditors at the Reconvened Meeting is to provide for a better return for the Company’s creditors than would result from a winding up of the Company.
- G On 2 May 2002 this deed of company arrangement was entered into, as a result of which the Voluntary Administrators became the Deed Administrators.
- H At meetings of the creditors of each Ansett Group Company, Aeropelican Air Services Pty Ltd and Skywest Airlines Pty Ltd (“Pooling Meetings”) the creditors of those companies voted on and carried resolutions (“Pooling Resolutions”), thereby amending this Deed and all other Ansett Group Company DOCAs so as to effect the “pooling” into Ansett Australia Limited (subject to deed of company arrangement) (“AAL”) of the assets of, and creditor/beneficiary claims against:
- (a) the Ansett Group Companies other than AAL;
- (b) the Pelican Trust; and
- (c) the Westsky Trust,
- in the manner set out in this Deed, the other Ansett Group Company DOCAs, the Pelican Trust Deed and the Westsky Trust Deed, each as varied (“Pooling”).
- I The Deed Administrators will do all such acts and things to effect Pooling.

GJ Subject to the rights of any Secured Creditor, Owner or Lessor, this Deed binds all creditors of the Company in accordance with Section 444D of the Act and also binds the Company, its Officers and Members in accordance with Section 444G of the Act.

## NOW THIS DEED PROVIDES AS FOLLOWS:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed unless the subject or context otherwise requires:

**“AAL”** has the meaning given in Recital H;

**“Acknowledging Ansett Group Company”** means each of the companies named in Part 1 of Schedule 1 other than the Company;

**“Act”** means the *Corporations Act* 2001 (Cth);

**“Administrators’ Website”** means collectively the websites maintained at the following URLs:

(a) <http://www.ansett.com.au/administrator/>; and

(b) <http://www.abl.com.au/administrator/>;

**“Air New Zealand Director”** means each person who is, or was at any time since Air New Zealand Limited acquired full ownership of the Ansett Group a director or secretary of any company in the Air New Zealand Group or the Ansett Group, as set out in a schedule to the Air New Zealand MOU;

**“Air New Zealand Group”** means Air New Zealand Limited and its subsidiaries, other than the Ansett Group, as set out in a schedule to the Air New Zealand MOU;

**“Air New Zealand MOU”** means the Memorandum of Understanding dated 3 October 2001 between, amongst others, the Ansett Group, the Voluntary Administrators, the Air New Zealand Group and directors of both the Air New Zealand Group and the Ansett Group, approved by an order of the Court in proceeding no. V3045 of 2001 (a copy of both the Air New Zealand MOU and the relevant order are attached as Exhibit 4);

**“Aircraft Lessor”** means any person other than the Company who is the legal or beneficial owner of an aircraft that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date;

**“Ansett Group Company”** means each of the companies named in Parts 1 and 2 of Schedule 1;

**“Ansett Group”** means collectively the Company and each other Ansett Group Company;

**“Appointment Date”** means, in respect of:

- (a) Ansett Australia and Air New Zealand Engineering Services Limited, the date Messrs. Mentha and Korda were appointed its administrators, being 3 October 2001; and
- (b) each other Ansett Group Company, the date that Messrs. Hall, Hedge and Watson were appointed as administrators of that company, being either 12 or 14 September 2001, as the case may be;

**“ASIC”** means the Australian Securities and Investments Commission;

**“Asset”** includes a mere cause of action or chose in action;

**“Business Day”** means any day other than a Saturday, Sunday or public holiday in Melbourne;

**“Claim”** means a debt payable by, and all claims against, the Company (present or future, certain or contingent, ascertained or sounding only in damages), being debts or claims the circumstances giving rise to which occurred on or before the Appointment Date;

**“Committee”** means a committee of Deed Creditors formed in accordance with Clause 25 of the Deed;

**“Coupon Creditor”** means a person who on the Appointment Date was the holder of a ticket for air travel to be provided by the Company on or after the Appointment Date and which has not been honoured by the relevant carrier;

**“Court”** means the Federal Court of Australia at its Melbourne Registry;

**“Deed”** means this Deed of Company Arrangement as amended from time to time;

**“Deed Administrators”** means Mark Francis Xavier Mentha and Mark Anthony Korda in their capacity as administrators of the Deed;

**“Deed Administrators’ Remuneration, Costs and Indemnity”** means the amount which the Deed Administrators are entitled to be remunerated, reimbursed and indemnified against under Clause 23.2 of the Deed;

**“Deed Creditor”** means any person who has a Claim, including (to the extent applicable):

- (a) Employees;
- (b) SEESA Payer;
- (c) Suppliers;
- (d) Non Cost Effective Dividend Recipients;
- (e) Aircraft Lessors;
- (f) Domestic Terminal Lessors;
- (g) Other Lessors;
- (h) Secured Finance Lease Creditors;
- (i) Coupon Creditors;
- (j) Global Rewards Creditors;
- (k) Golden Wing Creditors;
- (l) Superannuation Fund trustees;

**“Deed Period”** means the period commencing on the Effective Date and ending on the Termination Date;

**“Distribution Amounts”** means the amounts described in Clause 18.1;

**“DOCA” means Deed of Company Arrangement (as amended);**

**“Domestic Terminal Leases”** means the leases for any of the airport terminals located at the following Australian airports which are used by, occupied or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date, namely:

- (a) Melbourne Airport;
- (b) Sydney Airport;
- (c) Brisbane Airport;



- (d) Adelaide Airport;
- (e) Perth Airport;
- (f) Hobart Airport;
- (g) Darwin Airport;
- (h) Alice Springs Airport;
- (i) Townsville Airport;
- (j) Coolangatta Airport; and
- (k) Rockhampton Airport;

**“Duplicated Claim”** means any debt payable by, and any claim against any Ansett Group Company (present or future, certain or contingent, ascertained or sounding only in damages), being debts or claims the circumstances giving rise to which occurred on or before the Appointment Date, in respect of which the relevant creditor would have been entitled, immediately prior to the passing of the Pooling Resolutions, to have lodged a proof of debt in relation to the entirety or any part thereof in more than one of the administrations of the Ansett Group Companies or against the Pelican or Westsky Trusts, whether that entitlement arose by way of guarantee, indemnity or otherwise;

**“Domestic Terminal Lessors”** means the lessors under Domestic Terminal Leases;

**“Effective Date”** means the date this Deed is executed by all parties;

**“Employee”** means each past and present employee of the Company who has a Claim;

**“Employee Amounts”** means in relation to an Employee all amounts owing (if any) to that Employee in respect of their employment including (but without limitation) entitlements to payment of wages or salary in lieu of notice, long service leave, annual and sick leave;

**“Enforcement Process”** in relation to property means:

- (a) execution against the property; or
- (b) any other enforcement process in relation to that property that involves a court or sheriff;

**“Entitlement”** means the amount of a Claim that a Participating Creditor is entitled to be paid as a distribution in accordance with the provisions of the Deed;

**“Equipment”** means aircraft, motor vehicles, plant and equipment and fixtures and fittings of whatever description but for the avoidance of doubt does not include Real Property;

**“Excluded Creditors”** means any Deed Creditor to the extent they have been paid during or after the Voluntary Administration Period or the Deed Period;

**“Finance Lease”** means a lease constituting, or accounted for in a similar way to, a finance lease or capitalised lease under Australian Accounting Standards;

**“Finance Lease Creditors”** means Participating Creditors whose Claim arises under a valid Finance Lease for Equipment;

**“Fixed Charge Assets”** means the assets, property and undertaking of the Company over which a Secured Creditor has a fixed charge as at the Appointment Date under the terms of a Security granted by the Company to the Secured Creditor;

**“Floating Charge Assets”** means the assets, property and undertaking of the Company over which a Secured Creditor has a floating charge as at the Appointment Date under the terms of a Security granted by the Company to the Secured Creditor;

**“Goods”** means any trading stock, packaging or other goods or materials supplied to the Company on or before the Appointment Date;

**“Global Reward Creditor”** means a person who is a member of the frequent flyer scheme operated by the Company known as Global Rewards as at the Appointment Date;

**“Golden Wing Creditor”** means a person who was a member of the Golden Wing Club or would be a member of the Golden Wing Club but for the administration of the Company;

**“Lease”** means any lease, licence or other agreement to which a Lessor is a party, including (without limitation) the Domestic Terminal Leases;

**“Legal Personal Representative”** means a trustee or executor appointed to the Voluntary Administrators or Deed Administrators upon death, incapacity, insanity or any combination of them.

**“Lessor”** means any person other than the Company who is the legal or beneficial owner of Real Property or other property that is occupied or used or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date, comprising any or all of the Property Lessors, Aircraft Lessors and Other Lessors;

**“Mediation Agreement”** means an agreement reached between the Deed Administrators and a ROT Creditor in respect of a ROT Claim during or after the process of mediation under Clause 15 of the Deed;

**“Mediator”** means a mediator agreed by the Deed Administrators and a ROT Creditor to mediate any dispute in relation to that ROT Creditor’s ROT Claim pursuant to Clause 15;

**“Members”** means shareholders of the Company;

**“Non Cost Effective Claim”** means the Claim of a Deed Creditor whose Claim in the bona fide assessment of the Deed Administrators would receive a dividend for an amount less than \$AUD25 after an accurate estimation of the dividend is made ~~in accordance with Clause 18.4;~~

**“Non Cost Effective Dividend Recipients”** means a person with a Claim which is a Non Cost Effective Claim;

**“Officer”** has the meaning given in paragraphs (a) and (b) of that term as defined in Section 9 of the Act;

**“Other Lessor”** means any person other than the Company who is the legal or beneficial owner of an asset (other than Real Property or an aircraft) that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date;

**“Owner”** means any person other than the Company who is the legal or beneficial owner of property used or occupied by or on behalf of or in the possession of the Company at the Appointment Date;

**“Participating Creditors”** means Deed Creditors other than Non Cost Effective Dividend Recipients and Excluded Creditors;

**“Pelican Trust”** means the trust established for the benefit of creditors of Aeropelican Air Services Pty Ltd pursuant to the Pelican Trust Deed, declared 11 June 2002;

**“Pooling”, “Pooling Meetings”, “Pooling Orders” and “Pooling Resolutions” have the meanings given in Recital H.**

**“Premises”** means any Real Property used, occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date and which is not owned by the Company;

**“Priority Creditors”** means:

- (a) the Voluntary Administrators and the Deed Administrators in relation to any amounts due and payable to the Voluntary Administrators or the Deed Administrators pursuant to the Act or the terms of the Deed;
- (b) Secured Creditors in relation to the amounts they are entitled to be paid in priority to Participating Creditors who are not Priority Creditors pursuant to the terms of their Security;
- (c) Priority ROT Creditors to the extent of their Priority ROT Amount;
- (d) Employees who would have priority pursuant to Section 556 of the Act to the extent of their Employee Amounts and the SEESA Payer in relation to SEESA Payments;
- (e) trustees of Superannuation Funds to the extent of their Priority Creditor Amounts,

but does not include Top Up Retrenchment Benefit Creditors;

**“Priority Creditor Amounts”** means:

- (a) in the case of Priority ROT Creditors, their respective Priority ROT Amounts;
- (b) in the case of Employees, the amount to which they would be afforded priority under Section 556 of the Act if the Company were wound up;
- (c) in the case of the Voluntary Administrators or the Deed Administrators, the Voluntary Administrators Remuneration Costs and Indemnity and the Deed Administrators Remuneration Costs and Indemnity respectively;
- (d) in the case of a trustee of a Superannuation Fund, the amount of any unpaid employer superannuation contributions and/or any unpaid member

superannuation contributions, relating to the relevant Superannuation Fund, but not including the amount of any Top Up Retrenchment Benefit Claim; and

- (e) in the case of Secured Creditors, the amount which they are entitled to be paid in priority to Participating Creditors who are not Priority Creditors pursuant to the terms of the Security granted in favour of that Secured Creditor by the Company;

**“Priority ROT Creditor”** means a ROT Creditor in relation to its respective Priority ROT Amount;

**“Priority ROT Amount”** means that part of a ROT Claim that is determined to be valid:

- (a) by the Deed Administrators (whose determination is not disputed by the ROT Creditor pursuant to Clause 15.6);
- (b) pursuant to a Mediation Agreement; or
- (c) as required by the Court;

**“Property Lessor”** means any person other than the Company who is the legal or beneficial owner of Real Property that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date, including (without limitation) the Domestic Terminal Lessors;

**“Real Property”** means a legal or equitable estate or interest in real property of any description;

**“Regulations”** means the *Corporations Regulations*;

**“Reconvened Meeting”** has the meaning given in Recital C;

**“Related Body Corporate”** has the meaning given in the Act and **“Related”** bears a corresponding meaning;

**“Resolution”** means a resolution passed at a meeting of Deed Creditors convened in accordance with this Deed;

**“ROT Claim”** means a claim by a Supplier that pursuant to the terms of trade by which the Supplier traded with the Company, the Supplier retained an interest in or ownership of Goods and in respect of which there is no provision or act undertaken by that Supplier inconsistent with those retention of ownership or interest provisions and, in respect of which such Goods remained in the possession of the Voluntary Administrators as at the Appointment

Date and for which payment of such Goods have not previously been made by the Company;

**“ROT Claim Amount”** means in the case of each ROT Creditor the monetary extent of a ROT Claim asserted by that ROT Creditor which have not been sold and were in the possession of the Company on the Appointment Date;

**“ROT Creditor”** means a person who has a ROT Claim;

**“Secured Creditor”** means any Deed Creditor who had the benefit of a Security which was valid at the Appointment Date or which is validated within 14 Business Days of the execution of the Deed, over all or any assets of the Company securing all or any part of its Claim but only to the extent of that Security at the Appointment Date;

**“Secured Finance Lease Creditor”** means any Secured Creditor who has entered into a Finance Lease with the Company and holds, as security for the payment of any debt or liability or the performance of any obligation under that Finance Lease, a Security over an aircraft that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date but only to the extent of that Security as at the Appointment Date;

**“Security”** means any mortgage, chattel mortgage, pledge, charge, agreement, encumbrance, lien, any right of set-off (arising otherwise than by operation of law or as a result of a banker's right to combine accounts), assignment which provides for and secures the payment of any debt or monetary liability or the performance of any obligation;

**“SEESA Deed”** means the deed between the Commonwealth of Australia, Ansett Holdings Ltd (Administrators Appointed) (ACN 065 117 535), various other Ansett companies and the Voluntary Administrators dated 14 December 2001 and attached as Exhibit 1;

**“SEESA Payer”** means SEES Pty Ltd ABN 35 098 586 308;

**“SEESA Payments”** means payments made by the SEESA Payer pursuant to the Special Employee Entitlement Scheme for Ansett Group employees established under the *Air Passenger Ticket Levy (Collection) Act 2001* and paid to the Voluntary Administrators or the Deed Administrators in accordance with the SEESA Deed and the SEESA Payments Deed, and in accordance with the order of the Court in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7) and a determination made by the Minister for Employment and Workplace Relations under that Act;

**“SEESA Payments Deed”** means the Deed dated 18 December 2001 between the SEESA Payer, the Ansett Group and the Voluntary Administrators setting out the terms on which SEESA Payments are to be paid to the Voluntary Administrators or the Deed Administrators and the priority in which such payments shall be repaid, a copy of which is attached as Exhibit 2;

**“Superannuation Funds”** means the Ansett Australia Ground Staff Superannuation Plan (*trustee - Ansett Australia Ground Staff Superannuation Plan Pty Ltd*); the Ansett Transport Industries Limited Pilots/Management Superannuation Plan (*trustee - Ansett Australia Pilots/Management Superannuation Plan Pty Ltd*); the Ansett Transport Industries Limited Flight Engineers’ Superannuation Plan (*trustee - Ansett Australia Flight Engineers’ Superannuation Plan Pty Ltd*); the Ansett Transport Industries Limited Flight Attendants Superannuation Plan (*trustee - Ansett Australia Flight Attendants Superannuation Plan Pty Ltd*); and Ansett Accumulation Plan (*trustee - Ansett Australia Pilots Accumulation Plan Pty Ltd*);

**“Supplier”** means a Deed Creditor whose Claim arises from, or in consequence of, the supply of Goods;

**“Termination Date”** means the date upon which the Deed is terminated pursuant to Clause 21 of the Deed.

**“Top Up Retrenchment Benefit Claim”** means the amount of any claim for payment or contribution to a Superannuation Fund in respect of any shortfall in the Superannuation Fund in meeting or paying retrenchment benefits, being a claim of the type raised in Victorian Supreme Court proceeding no. 2115/01 (a copy of the statement of claim in that proceeding is attached as Exhibit 3), as so determined in that proceeding (if any);

**“Top Up Retrenchment Benefit Creditor”** means a person that is or was a trustee of a Superannuation Fund or a Superannuation Fund with a Top Up Retrenchment Benefit Claim;

**“Voluntary Administration Period”** means the period of time commencing on the Appointment Date and concluding on the Effective Date;

**“Voluntary Administrators”** means Mark Francis Xavier Mentha and Mark Anthony Korda in their capacity as administrators of the Company; ~~and~~

**“Voluntary Administrators’ Remuneration, Costs and Indemnity”** means the amount which the Voluntary Administrators

are entitled to be remunerated, reimbursed and indemnified against under Clause 23.1 of the Deed: and

“Westsky Trust” means the trust established for the benefit of creditors of Skywest Airlines Pty Ltd pursuant to the Westsky Trust Deed, declared 7 March 2002.

## 1.2 Interpretation

In the Deed, unless the subject or context otherwise requires:

- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing any one gender include the other gender and vice versa;
- 1.2.3 words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 1.2.4 words “written “ and “in writing” include any means of visible reproduction of words in a tangible and permanently viable form;
- 1.2.5 if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 1.2.6 reference to Clauses and Schedules are references to clauses and schedules of the Deed;
- 1.2.7 references in the Deed to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction; and
- 1.2.8 references in the Deed to Sections shall be construed as references to Sections of the Act;
- 1.2.9 references to (or to any specified provision of) the Deed or to any other agreement or document shall be construed as references to (that provision of) the Deed or that other agreement or document as amended, substituted, novated, supplemented, varied or replaced with the agreement of the relevant parties and in force at any relevant time;

- 1.2.10 unless otherwise provided in the Deed, the provisions of Schedule 8A of the Regulations shall not apply to or be incorporated in this Deed;
- 1.2.11 a construction that would promote the purpose or object underlying the Deed (whether or not stated in this Deed) is to be preferred to a construction that would not promote that purpose or object;
- 1.2.12 headings in the Deed are for the purpose of more convenient reference only and do not form part of the Deed or affect its construction or interpretation;
- 1.2.13 a reference to “a Form” means a reference to the applicable form as set out in Schedule One of the Regulations, with such modification as the Voluntary Administrators or the Deed Administrators (as the case may be) considers appropriate to adapt the Form to the circumstances for which the Form is to be used under the Deed;
- 1.2.14 a term or expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act provided that meaning is not inconsistent with the purpose or object of the Deed; and
- 1.2.15 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Deed or any part of it.

### **1.3 Inconsistency with Act or Regulations**

If there is any inconsistency between the provisions of the Deed and the Act or Regulations, the Deed shall prevail to the extent permitted by law.

### **1.4 Other Inconsistencies**

- 1.4.1 If there is any inconsistency between the provisions of the Deed and the Constitution of the Company or any other obligation binding on the Company other than the SEESA Deed and the SEESA Payments Deed, the provisions of the Deed shall prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Company.

1.4.2 For the avoidance of doubt, all of the parties bound by the Deed acknowledge that the Top Up Retrenchment Benefit Claims are not intended to rank in priority above ordinary unsecured claims in a winding up of the Company, even if a court should so determine and notwithstanding the provisions of the SEESA Deed, the SEESA Payments Deed and the terms of the Court's order in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7).

## 1.5 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.

## 1.6 Successors and Assigns

The obligations and liabilities imposed and rights and benefits conferred on the parties under the Deed shall be binding upon and enure in favour of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

## 2 COMMENCEMENT OF THIS DEED

### 2.1 Operative Date

Subject to Clause 2.2, this Deed shall take effect on the Effective Date.

### 2.2 Interim Effect

Insofar as a person would be bound by the Deed if it had already been executed, the person must not, at any time on or after the Section 439C Resolution, but before the Deed is executed:

2.2.1 do anything inconsistent with the Deed except with the leave of the Court; or

2.2.2 do any of the following:

2.2.2.1 make an application for an order to wind up the Company;

2.2.2.2 proceed with such an application made before the Deed became binding on the person;

2.2.2.3 begin or proceed with a proceeding against the Company or in relation to any of its property except with the leave of the Court and in accordance with such terms (if any) as the Court imposes; or

2.2.2.4 begin or proceed with enforcement process in relation to property of the Company except with the leave of the Court and in accordance with such terms (if any) as the Court imposes.

### **3 PURPOSE AND OBJECTS**

The purposes and objects underlying this Deed are to provide for the business, property and affairs of the Company to be administered in a way that:

#### **3.1 Maximum Return**

provides the maximum possible return for the Deed Creditors from the orderly sale and realisation of assets of the Company;

#### **3.2 No Compromise**

does not compromise any Deed Creditor's debts;

#### **3.3 No Crystallisation of Domestic Terminal Lessors' Rights**

may avoid crystallisation of Domestic Terminal Lessors' rights to terminate Domestic Terminal Leases;

#### **3.4 Moratorium**

provides for a moratorium on all Deed Creditors taking action against the Company;

#### **3.5 Variations**

provides for subsequent meetings of Deed Creditors to consider variations to the provisions of the Deed;

#### **3.6 Better Return than Winding-up**

results in a better return for the Deed Creditors of the Company than would result from an immediate winding-up of the Company;

### **3.7 Commercial Resolution**

facilitates a commercial resolution to the financial difficulties of the Company without unnecessary impediment or legal dispute; ~~and~~

### **3.8 Due Regard to Court Orders and Directions**

has due regard to any orders or directions made by the Court as to how Part 5.3A of the Act is to operate in relation to the Company, save that the parties bound by the Deed acknowledge that the Top Up Retrenchment Benefit Claims are not intended to rank in priority above ordinary unsecured claims in a winding up of the Company, even if a court should so determine and notwithstanding the provisions of the SEESA Deed, the SEESA Payments Deed and the terms of the Court's order in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7); ~~and~~

### **3.9 Pooling**

as a result of the carriage of the Pooling Resolutions, provides for Pooling.

## **4 MORATORIUM CREATED BY THIS DEED**

### **4.1 This Deed Binds All Persons**

Subject to the rights of any Secured Creditor pursuant to Section 444D(2) of the Act or any Owner or Lessor pursuant to Section 444D(3) of the Act, this Deed binds:

- 4.1.1 in accordance with Section 444D(1) of the Act, all Deed Creditors; and
- 4.1.2 in accordance with Section 444G of the Act, the Company, its Officers and Members and the Deed Administrators.

### **4.2 Restrictions on Persons Bound by this Deed**

During the Deed Period, without the Deed Administrators' prior written consent, a Deed Creditor shall not in relation to its Claim:

- 4.2.1 make an application for an order to wind up the Company;
- 4.2.2 proceed with any such application made before this Deed became binding on the Deed Creditor;

- 4.2.3 begin or continue any proceeding against the Company or in relation to any of its property except with the leave of the Court and in accordance with such terms (if any) as the Court imposes;
- 4.2.4 begin or continue with any Enforcement Process in relation to the property of the Company except with leave of the Court and in accordance with such terms (if any) as the Court imposes;
- 4.2.5 take any action whatsoever to seek to recover any part of its Claim other than pursuant to the Deed; or
- 4.2.6 commence or take any further step in any arbitration against the Company or to which the Company is a party.

#### **4.3 Deed Administrators Not Liable**

The Deed Administrators are not liable to an action or other proceeding for damages in respect of a refusal to give an approval or consent for the purposes of this moratorium.

#### **4.4 No Effect on Rights of Secured Creditors**

Nothing in the Deed shall affect in any way and at any time the rights of the Secured Creditors in relation to the enforcement of their Securities during the Deed Period or their interests in the assets of the Company over which they have Security.

#### **4.5 No Effect on Rights of Deed Administrators to Limit Secured Creditors**

Nothing in the Deed shall affect in any way the Deed Administrators' rights to limit the Secured Creditors in relation to the enforcement of their Securities or their interests in the assets of the Company over which they have Security.

#### **4.6 No Release**

~~The Deed does not release the Company from any Claims, except to the extent (if any) provided for in any subsequent variation to the Deed which may be approved by Deed Creditors at a meeting of creditors convened under Section 445F of the Act (as contemplated by Clause 18.4).~~



## 5 DEED ADMINISTRATORS

### 5.1 Acceptance of Appointment

The Deed Administrators:

- 5.1.1 accept the appointment as administrators of the Deed; and
- 5.1.2 agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Act.

### 5.2 Role of Deed Administrators

The Deed shall be administered by the Deed Administrators who shall have the powers, functions and duties conferred on them by this Deed and the Act. Without limiting the foregoing, during the Deed Period, the Deed Administrators:

- 5.2.1 have control of the Company's business, property and affairs;
- 5.2.2 may carry on that business and manage that property and those affairs;
- 5.2.3 may terminate or dispose of all or part of that business and may dispose of any of that property or any other; and
- 5.2.4 may perform any function and exercise any power that the Company or any of its Officers could perform or exercise if the Company were not subject to the Deed;
- 5.2.5 may sell or dispose of shares in the Company; ~~and~~
- 5.2.6 may transfer assets or novate liabilities from the Company to another Ansett Group Company (or vice versa) for the purpose of maximising the proceeds of sale of the Company's assets or for maximising the return to Deed Creditors; ~~and~~

5.2.7 will effect Pooling.

## 6 DEED ADMINISTRATORS ACT AS COMPANY'S AGENT

In performing the functions or exercising the powers conferred by the Deed, and carrying out the duties arising under the Deed, the Deed Administrators shall act as agent for and on behalf of the Company.



## **7 POWERS OF OTHER OFFICERS SUSPENDED**

### **7.1 No Exercise of Power as Officer of Company Without Consent**

While the Company is subject to the Deed, a person (other than the Deed Administrators) cannot perform or exercise and must not purport to perform or exercise a function or power as an Officer of the Company except with the Deed Administrators' prior written approval.

### **7.2 No Resolutions by Company's Directors Without Consent**

For the avoidance of doubt, the directors of the Company shall not pass a resolution to place the Company into voluntary administration or take any step to wind it up except with the Deed Administrators' prior written approval.

## **8 DEED ADMINISTRATORS MAY INVESTIGATE AFFAIRS**

The Deed Administrators may investigate the Company's business, property, affairs and financial circumstances and may report the results of their investigations to ASIC and the Deed Creditors.

## **9 DEED ADMINISTRATORS' RIGHT TO COMPANY'S BOOKS**

### **9.1 Deed Administrators' Rights to Company's Books**

A person is not entitled as against the Deed Administrators:

9.1.1 to obtain possession of books of the Company; or

9.1.2 to claim or enforce a lien on such books, but such a lien is not otherwise prejudiced.

### **9.2 Secured Creditors' and Secured Finance Lease Creditors' Rights to Records**

Notwithstanding the effect of Clause 9.1, a Secured Creditor or a Secured Finance Lease Creditor is entitled as against the Deed Administrators to possession of all the technical records for an aircraft, engine or part that is the subject of such Secured Creditor's or Secured Finance Lease Creditor's Security upon enforcement of that Security.

## **10 TRANSFER OF SHARES**

During the Deed Period, a Member shall not transfer any shares owned by it in the Company except with the Deed Administrators' prior written approval.



## **11 ACKNOWLEDGMENTS AND AGREEMENTS OF OWNERS AND LESSORS**

### **11.1 Acknowledgements**

Each Owner and Lessor bound by the Deed acknowledges and agrees that:

- 11.1.1 the Voluntary Administrators have not, during the Voluntary Administration Period or prior to or as at the Effective Date, adopted, ratified or become liable to the Lessors under any Lease with the Lessors;
- 11.1.2 the Deed Administrators shall not adopt, ratify or become liable to the Lessors under any Lease with the Lessors; and
- 11.1.3 it shall use its best endeavours to mitigate any loss and damage suffered by it.

### **11.2 Voluntary Administrators Not Personally Bound**

11.2.1 The Voluntary Administrators have not ratified, adopted or in any other manner become bound under, or become liable to any Lessor under, any Lease by virtue of:

11.2.1.1 any discussions or correspondence they may have had or entered into with any Lessor; or

11.2.1.2 the use, occupation or possession of any Premises or Equipment by the Company,

during the Voluntary Administration Period or prior to or as at the Effective Date.

11.2.2 For the avoidance of doubt, nothing in Clause 11.2.1 is intended to avoid the Voluntary Administrators' liability under Sections 443A or 443B of the Act for the payment of rent or other amounts payable in respect of a Lease.

### **11.3 Owners and Lessors**

The Deed does not affect a possessory right that an Owner or Lessor of Real Property has in relation to that Real Property except so far as:

- 11.3.1 the Court grants any equitable relief;

11.3.2 the Deed so provides in relation to that Owner or Lessor who voted in favour of the Section 439C Resolution; or

11.3.3 a Court orders under Section 444F(4) of the Act or otherwise.

#### **11.4 Deed Administrators Rights Not Limited**

Nothing in the Deed affects or limits in any way or at any time the rights of the Deed Administrators to:

11.4.1 oppose any attempt by a Secured Creditor, Owner or Lessor to enforce, realise or otherwise deal with its Security, Real Property or property as the case may be, at common law or under the Act; or

11.4.2 to seek relief from the Court pursuant to Section 444F of the Act or otherwise.

## **12 SALE AND REALISATION OF ASSETS**

### **12.1 Sale at Best Price Reasonably Obtainable**

The Deed Administrators shall take reasonable care and endeavour to sell or otherwise realise all property, assets and rights of the Company for the best price that is reasonably obtainable having regard to Section 442C of the Act and the circumstances existing when those assets are sold and having regard to the diminution of the Company's liabilities in general and a reduction of payments to Participating Creditors in particular.

### **12.2 Further Assurances**

The Company and each person bound by the Deed shall do all things and sign all documents required by the Deed Administrators to effect, ratify and perfect any transfer of assets and liabilities of the Company.

### **12.3 No Disposal of Fixed Charge Assets or Floating Charge Assets Without Prior Consent**

The Deed Administrators and the Company shall not sell or dispose of:

12.3.1 Fixed Charge Assets without the prior consent of the Secured Creditor who holds the relevant fixed charge; or

12.3.2 Floating Charge Assets without the prior consent of the Secured Creditor who holds the relevant floating charge other than in the ordinary course of business.

For the purposes of the Deed, the Deed Administrators and the Company acknowledge that a sale of any part of the business of the Company to a third party purchaser is not a sale in the ordinary course of the Company's business.

### 13 **POOLING POSSIBLE POOLING**

All persons bound by the Deed acknowledge that:

#### 13.1 **Obligation to take Reasonable Steps to Pool**

The Voluntary Administrators ~~are~~were required, pursuant to the terms of the Air New Zealand MOU and the SEESA Deed, to take all reasonable steps to propose and recommend that each Ansett Group Company shall seek to pool all of the assets and liabilities of the Ansett Group, so that all Ansett Group Companies are treated as one company; and

#### 13.2 **Pooling Meetings of Deed Creditors**

The Deed Administrators ~~shall convene~~convened the Pooling Meetings, at which the Pooling Resolutions were carried.~~a further meeting of Deed Creditors to consider a variation to the Deed which shall include a regime for the pooling of all assets and liabilities.~~

#### 13.3 **Deed Administrators will effect Pooling**

As a result of the carriage of the Pooling Resolutions the Deed Administrators will effect Pooling.

### 14 **PROOFS OF DEBT - ASCERTAINMENT OF CLAIMS**

~~The rules and mechanisms to be applied to proofs of debt and the ascertainment of Claims shall be similar to the rules and mechanisms for such things prescribed by the Act in the context of the liquidation of a company, amended or adjusted as appropriate to make the process as cost effective as possible.~~

### 15 **RETENTION OF TITLE CLAIMS**

#### 15.1 **Provisions of this Clause to Apply**

- 15.1.1 The provisions of this Clause apply to the determination of ROT Claims and ROT Claim Amounts.
- 15.1.2 Notwithstanding any other provisions in this Clause 15, the Deed Administrators may in their sole and absolute discretions resolve any ROT Claims as they see fit provided that it is in the commercial interest of the Company for the Deed Administrators to do so.
- 15.1.3 Nothing in the Deed affects or limits in anyway the right or rights of the Deed Administrators to oppose any attempt by a ROT Creditor to enforce, realise or otherwise deal with its property at common law or under the Act or to seek relief from the Court pursuant to Section 444F of the Act.

## **15.2 Advertisement**

- 15.2.1 After the Effective Date the Deed Administrators may, if they deem it necessary to do so, advertise once in newspapers circulating generally in each State and Territory of Australia and on the Administrators' Website requiring each person claiming to have a ROT Claim to deliver to the Deed Administrators within seven days of the date of the advertisement a notice in writing of that person's ROT Claim (the "ROT Notice"). The ROT Notice shall contain particulars of the ROT Claim and the estimated ROT Claim Amount, including a statement of account and shall specify the documents by which that statement can be substantiated, and the person shall bear all costs and expenses incurred by it in relation to the ROT Notice.
- 15.2.2 If a person does not deliver to the Deed Administrators a ROT Notice prior to the expiration of the period specified in the advertisement referred to in Clause 15.2.1, that person shall forever be barred from asserting a ROT Claim, but without prejudice to the right of that person to have a Claim;
- 15.2.3 Each person bound by this Deed acknowledges and agrees that the Deed Administrators may in their sole and absolute discretion determine that:
  - 15.2.3.1 the terms and conditions of a ROT Creditor's terms of trade are inconsistent with retention of ownership or an interest in Goods by that ROT Creditor;

- 15.2.3.2 the terms and conditions of a ROT Creditor's terms of trade do not retain ownership or an interest in Goods by that ROT Creditor; or
- 15.2.3.3 a ROT Creditor has in its dealings with the Company acted inconsistently with retention of ownership or an interest by that ROT Creditor.

### **15.3 Evidence**

Each ROT Creditor shall provide the Deed Administrators with such evidence or information in support of its ROT Claim and its ROT Claim Amount as the Deed Administrators may reasonably require, and each ROT Creditor shall be responsible for obtaining all such evidence and information and shall bear all costs and expenses incurred by it in doing so. The Deed Administrators may provide each ROT Creditor with such information as the ROT Creditor may reasonably require in relation to its ROT Claim and ROT Claim Amount, provided such information is readily available to the Deed Administrators.

### **15.4 Opinion on Validity**

The Deed Administrators shall form an opinion on the admissibility and validity of the ROT Claim and the extent of the Priority ROT Amount of each ROT Creditor to the extent they are able to do so, and in seeking to form that opinion the Deed Administrators shall have regard to the appropriate principles of law.

### **15.5 Notification of ROT Claim Amount**

The Deed Administrators shall (without prejudice to the Voluntary Administrators' and Deed Administrators' rights) notify each ROT Creditor in writing of the Deed Administrators' opinion on the ROT Claim and the Priority ROT Amount. The Deed Administrators' opinion on the validity of a ROT Claim and a Priority ROT Amount pursuant to this Clause is without prejudice to any rights of the Voluntary Administrators and Deed Administrators.

### **15.6 Dispute and Mediation**

If a ROT Creditor disputes the Deed Administrators' opinion on the Priority ROT Amount, the ROT Creditor may, within fourteen days of being advised of the Deed Administrators' opinion on the Priority ROT Amount, give a notice in writing of dispute ("a ROT Dispute Notice") to the Deed Administrators, in which case the Deed Administrators and the ROT Creditor shall have the ROT Claim and

the Priority ROT Amount referred to mediation by a mediator agreed by the Deed Administrators and the ROT Creditor in an endeavour to resolve the dispute.

### **15.7 Mediation Conduct Agreement**

Each ROT Creditor giving a ROT Dispute Notice (“a Disputing ROT Creditor”) shall execute an agreement governing the conduct of the mediation process in the form provided by the Deed Administrators, and each Disputing ROT Creditor shall perform all obligations under and be bound by the provisions of that agreement. The Deed Administrators shall also execute an agreement in the form provided to Disputing ROT Creditors by the Deed Administrators in respect of each Disputing ROT Creditor and shall perform all obligations under and be bound by the provisions of those agreements.

### **15.8 Professional privilege**

The principles of legal professional privilege shall apply to any mediation and be preserved for the benefit of the parties to the mediation, and no act or other conduct on the part of a party in the course of the mediation shall be taken as, or be asserted or relied upon by the other party to the mediation as being, a waiver of any legal professional privilege that would otherwise be available to the first party.

### **15.9 Mediation on without prejudice basis**

All discussion and negotiation during the mediation shall be on a “without prejudice” basis unless such privilege is waived by the parties by agreement, either generally or in relation to any aspect, or agreement is reached. Neither of the parties to the mediation may refer in any subsequent proceedings to any such privileged discussions and negotiations or require the mediator to do so and no party may have access to any of the Mediator’s notes or call the Mediator as a witness in any proceedings.

### **15.10 Mediation Resolving Dispute**

If mediation results in an agreement being reached between the Deed Administrators and a Disputing ROT Creditor in respect of the ROT Claim and the Priority ROT Amount of the Disputing ROT Creditor, all persons bound by this Deed are bound by that agreement. If the agreement provides that the whole or any part of the ROT Claim is or is deemed to be valid in respect of a ROT Claim Amount, the valid portion shall constitute a Priority ROT Amount to be included as a Priority Creditor Amount. If the agreement provides that the whole or any part of the ROT Claim is

or is deemed to be invalid, the invalid part of the ROT Claim Amount shall rank as an ordinary unsecured Claim.

#### **15.11 Mediation not resolving Dispute**

If the Mediator declares that the mediation has not resolved the dispute the Deed Administrator shall be deemed to have not admitted the Disputing ROT Creditor's ROT Claim, and the Disputing ROT Creditor may apply to the Court for relief.

#### **15.12 Distribution where no notice of dispute**

If a ROT Creditor does not give a Dispute Notice to the Deed Administrator within the time provided in Clause 15.6, that ROT Creditor shall be bound by the Deed Administrators' opinion on the Priority ROT Amount of that ROT Creditor, and the balance owing to each ROT Creditor in respect of their ROT Claim shall rank as an ordinary unsecured Claim.

### **16 TOP UP RETRENCHMENT BENEFIT CLAIMS**

#### **16.1 No Priority**

16.1.1 All Top Up Retrenchment Benefit Claims by trustees of the Superannuation Funds shall be treated as ordinary unsecured Claims, and shall not constitute Priority Creditor Amounts for the purposes of this Deed, even if a court determines that all or any of such claims rank to priority in a liquidation of the Company.

16.1.2 For the avoidance of doubt, all persons bound by the Deed acknowledge that the provisions of Clauses 16.1.1 and 18.3 are intended to govern the treatment of Top Up Retrenchment Benefit Claims under the Deed, notwithstanding:

16.1.2.1 the provisions of the SEESA Deed, the SEESA Payments Deed and the terms of the Court's order in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7); and

16.1.2.2 that a court may determine that Top Up Retrenchment Benefit Claims rank to priority in a winding up of the Company as referred to in Clause 16.1.1.



## 16.2 Deed Administrators' Consent

For the avoidance of doubt, the Deed Administrators consent to the Supreme Court of Victoria determining whether the provisions of Clause 16.1 are oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more creditors of the Company (in their capacity as Top Up Retrenchment Benefit Creditors) and should be severed from the Deed in accordance with Clause 29 or pursuant to Section 447A of the Act.

## 17 AIR NEW ZEALAND MOU

17.1 All parties bound by the Deed acknowledge that pursuant to the terms of Clause 18 of the Air New Zealand MOU, the Voluntary Administrators agreed as follows:

“18 The Voluntary Administrators will take all reasonable steps to propose and recommend (as the case may be) that each company in the Ansett Group enters into a Deed of Company Arrangement which will:

18.1 acknowledge and incorporate the terms of the Memorandum of Understanding or if in existence the Proposed Agreement; ...”

17.2 All parties bound by the Deed acknowledge that:

17.2.1 the Deed incorporates by reference the releases of Air New Zealand and the Air New Zealand Directors in the same terms as the Air New Zealand MOU; and

17.2.2 in accordance with the Air New Zealand MOU, the Deed Administrators may, after the Deed is entered into, request the Air New Zealand Group to sign and deliver to the Deed Administrators a transfer in blank of all shares held by the Air New Zealand Group in the Ansett Group for nominal value together with the share scrip for those shares.

## 18 **SPECIFIC REALISATIONS FOR THE COMPANY ~~PAYMENT OF CLAIMS AND POOLING OF THE COMPANY'S ASSETS AND CREDITOR CLAIMS INTO AAL~~**

### 18.1 **Funds for Distribution ~~to Deed Creditors~~**

Until such time as the transfers referred to in Clause 18.1A have been completed, the The Company shall hold for its own benefit:

- 18.1.1 the proceeds from the sale of any assets owned by it;
- 18.1.2 the refunds of stamp duty received on termination or surrender of any lease held by it; and
- 18.1.3 the proceeds from the realisation of any of its other Assets, including proceedings,

which shall constitute the **Distribution Amounts**.

#### **18.1A Transfer of Distribution Amounts and all other Company Assets to AAL**

The Deed Administrators will cause the Company to transfer all of its assets (including the Distribution Amounts) to AAL.

#### **18.1B Consent to transfer of Assets**

Each person bound by this Deed, in particular the Deed Creditors and AAL, consents to and will do all such things and execute all such documents required by the Deed Administrators to effect, ratify or perfect the transfer of assets to AAL referred to in Clause 18.1A.

#### **18.1C Deed Creditors entitled to prove in administration of AAL**

Each person bound by this Deed acknowledges the provisions of the AAL DOCA permitting each Deed Creditor (other than Excluded Creditors) to lodge in the administration of AAL a proof of debt in respect of their Claim for the same amount and with the same priority that the Claim would have enjoyed in the administration of the Company immediately prior to the passing of the Pooling Resolutions, subject only to the provisions of the AAL DOCA concerning Duplicated Claims.

#### **18.1D Release and discharge of Claims**

Each person bound by this Deed, upon completion of the transfers referred to in Clause 18.1A, irrevocably releases and discharges the Company and the Deed Administrators in their capacities as deed administrators of the Company from any and all liability whatsoever in relation to any Claim, including any liability arising in connection with the Company having provided a guarantee or indemnity or otherwise having become jointly or severally liable in relation to the obligations of any other Ansett Group Company.

#### **18.1E Plea in bar**

This Deed may be pleaded by the Company and the Deed Administrators in their capacities as deed administrators of the

Company in absolute bar to any demand, action, suit, claim or proceeding (including set offs, counterclaims, cross-claims and the like) in relation to any Claim.

## **18.2 Payment of Distribution Amounts**

~~The Distribution Amounts shall be applied in payment of the Voluntary Administrators, the Deed Administrators and the Participating Creditors of the Company as follows:~~

~~18.2.1 firstly, the Voluntary Administrators and the Deed Administrators in relation to any amounts owing to them and unpaid pursuant to the terms of the Deed, to the extent they would be afforded priority in a winding up of the Company;~~

~~18.2.1 secondly, the Secured Creditors of the Company, to the extent that their Security is valid;~~

~~18.2.1 thirdly, Priority ROT Creditors of the Company in relation to their Priority ROT Amount;~~

~~18.2.1 fourthly, in the order of priority set out in section 556:~~

~~18.2.1.1 Employees of the Company;~~

~~18.2.1.1 the SEESA Payer in accordance with the terms of the SEESA Deed and the SEESA Payments Deed;~~

~~18.2.1.1 any trustee of a Superannuation Fund that is a Priority Creditor, to the extent of its Priority Creditor Amount (but, for the avoidance of doubt, excluding the amount of any Top Up Retrenchment Benefit Claim that trustee may have); and~~

~~18.2.1.1 any other Participating Creditors of the Company entitled to a priority under section 556 of the Act as if the Company were to be wound up; and~~

~~18.2.1 fifthly (but subject to Clause 18.12), other Participating Creditors of the Company (including Top Up Retrenchment Benefit Creditors to the extent of their Top Up Retrenchment Benefit Claims) on a pro rata basis,~~

~~in the amounts and on the dates determined by the Deed Administrators in their absolute discretion.~~

### **18.3 Inconsistency with SEESA Deed or SEESA Payments Deed**

For the avoidance of doubt, if there is any apparent inconsistency between the Deed and the SEESA Deed or the SEESA Payments Deed concerning the priority of repayment to the SEESA Payer, the terms of the SEESA Deed and the SEESA Payments Deed shall prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Company, save that the SEESA Deed and the SEESA Payments Deed did not and were not intended to deal with any matter or thing other than the SEESA Payments in general and were not intended to and did not deal with the priority of the Top Up Retrenchment Benefit Claims.

### **18.4 Meeting of Creditors**

~~When the Deed Administrators have sold or otherwise realised sufficient assets so that they are able to make an accurate estimation of the amounts to be paid to Participating Creditors in accordance with the priority regime set out in Clause 18 and prior to the distribution of any money to Participating Creditors (other than Priority Creditors) in accordance with Clause 18.2.5, the Deed Administrators shall convene a meeting of creditors under Section 445F of the Act to consider:~~

~~18.4.1 any proposed variation to the Deed, including the incorporation in the Deed of provisions for releasing Claims of Deed Creditors less their Entitlements and the pooling of assets and liabilities; or~~

~~18.4.1 in the alternative, a resolution to terminate this Deed and wind up the Company.~~

~~For the purposes of such a meeting, the Deed Administrators shall advertise nationally and make available to the Deed Creditors on the Administrators' Website:~~

~~18.4.1 particulars of the proposed variation; and~~

~~18.4.1 such information which would be sent to Deed Creditors as if the meeting were a Second Meeting of Creditors under Section 439A of the Act.~~

### **18.5 Further Meetings of Creditors**

~~18.5.1 Without limiting the operation of Clause 18.4, the Deed Administrators shall convene a further meeting of Deed~~

~~Creditors within six months of the date of the Reconvened Meeting.~~

~~18.5.2 At such meeting, and each and any subsequent meetings of creditors convened pursuant to Section 445F, the relevant notice of meeting shall (as an alternative to any other resolutions set out in the notice involving the continuation and/or variation of this Deed) set out a resolution requiring the termination of this Deed and the winding up of the Company.~~

## **18.6 Deed Administrators' Discretion**

~~18.6.1 The Entitlement of a Deed Creditor shall be to payment of the portion of that Deed Creditor's Claim as the Deed Administrators in their absolute discretion determine that they are able to pay in accordance with Clauses 18.2.~~

~~18.6.2 No Deed Creditor shall be entitled to receive more than its Entitlement. If it does, it must repay any amount paid to it in excess of its Entitlement ("Excess") to the Deed Administrators as soon as practicable (but no later than 7 days) after becoming aware that the Excess has been paid to it.~~

## **18.7 Certificate Final and Binding**

~~A certificate signed by the Deed Administrators that an amount paid by it to a Deed Creditor constitutes an Entitlement for the purposes of the Deed shall, in the absence of manifest error, be final and conclusive and binding on the Deed Creditor.~~

## **18.8 Unclaimed Distributions**

~~The Entitlement of any Deed Creditor which remains unclaimed after a reasonable period of time (to be determined by the Deed Administrators), may be cancelled by the Deed Administrators and remitted to ASIC to be dealt with under Part 9.7 of the Act.~~

## **19 MANAGEMENT OF COMPANY**

The Deed Administrators shall retain day-to-day management and control of the Company until the Termination Date to the exclusion of the Company's directors.

## 20 POWERS OF ADMINISTRATORS

### 20.1 General Powers

The Deed Administrators shall be entitled in their capacity as Deed Administrators or any other capacity to exercise all the rights, powers, privileges, authorities and discretions which are ordinarily exercised by or vest in a trustee of a fixed trust and which are conferred by the Company's constitution or otherwise by law on the Company's directors to the exclusion of the Company's directors, provided that the Deed Administrators shall not be responsible for such statutory obligations as may continue to be imposed on the directors of the Company during the Deed Period.

### 20.2 Specific Powers

Without limiting Clause 20.1, the Deed Administrators shall have the following powers:

- 20.2.1 the powers conferred on the Members of the Company to the exclusion of those Members;
- 20.2.2 the powers conferred on the directors of the Company to the exclusion of the directors of the Company;
- 20.2.3 all of the powers set out in paragraph 2 of Schedule 8A of the Regulations;
- 20.2.4 the power to alter share capital;
- 20.2.5 the power to issue shares;
- 20.2.6 the power to vary class rights attaching to shares;
- 20.2.7 the power to change the Company's name;
- 20.2.8 the power to factor the debts of the Company;
- 20.2.9 the power to reduce the Company's capital;
- 20.2.10 the power to alter the Company's constitution;
- 20.2.11 the power to convene meetings of Members of the Company;
- 20.2.12 the power to resolve any dispute of any nature commercially;
- 20.2.13 in relation to the property, assets and rights of the Company, all the powers of a natural person who is the

absolute and beneficial owner of such property, assets and rights, including (without limitation) the power to sell or otherwise realise any such property, assets or rights pursuant to a sale process conducted by the Deed Administrators;

- 20.2.14 the power to assign and transfer property, assets and rights, and novate liabilities, of the Company to another Ansett Group Company for the purpose of maximising the sale of assets or for maximising the return to Deed Creditors;
- 20.2.15 the power to accept and take an assignment or transfer of property, assets and rights and to accept novation of liabilities from another Ansett Group Company;
- 20.2.16 the power to control the Company's business, property and affairs;
- 20.2.17 the power to carry on that business and manage that property and those affairs;
- 20.2.18 the power to terminate or dispose of all or part of that business and may dispose of any of that property or any other; and
- 20.2.19 the power to perform any function and exercise any power that the Company or any of its Officers could perform or exercise if the Company were not subject to the Deed;
- 20.2.20 the power to sell or dispose of shares in the Company; and
- 20.2.21 the power to agree to incur and treat a payment obligation arising during the Deed Period in relation to the administration of the Deed, or the Deed Administrators acting as Deed Administrators, including for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of, or in the possession of, the Company, as falling within the indemnity contained in Clause 24.1.

### **20.3 Power of Sale**

In exercising any power of sale, the Deed Administrators must have regard to Section 442C of the Act and take reasonable care and endeavour to sell the relevant asset for the best price that is reasonably obtainable, having regard to the circumstances existing

when the asset is sold and having regard to the diminution of the Company's liabilities in general and any reduction in payments to Participating Creditors in particular.

#### **20.4 Power to Engage Solicitors and Consultants**

The Deed Administrators shall have power to engage solicitors and consultants, and the Company or AAL shall pay all costs of any solicitors and consultants engaged by the Deed Administrators.

#### **20.5 Deed Administrators Acting as Company's Agent**

During the Deed Period the Deed Administrators are acting as the agents of the Company and accept no personal liability for any acts, matters or omissions relating to things done or not done in that capacity.

### **21 TERMINATION OF DEED**

#### **21.1 Termination of the Deed Period**

This Deed shall terminate on the Termination Date.

#### **21.2 Termination of this Deed by Court Order and Creditors' Resolution**

This Deed terminates:

- 21.2.1 upon Deed Creditors passing a resolution at a meeting of Deed Creditors to terminate the Deed;
- 21.2.2 when a Court makes an order under Section 445D of the Act; or
- 21.2.3 if the Company has paid all of the Deed Creditors' Entitlements, on the 14th day after the Deed Administrators have advertised notices of that fact once in newspapers circulating generally in each State and Territory of Australia and on the Administrators' Website,

whichever happens first.

#### **21.3 Deed Administrators to call meeting of Deed Creditors**

The Deed Administrators shall call a meeting of Deed Creditors (by advertising nationally and by posting on the Administrators' Websites) to consider termination of the Deed if:

- 21.3.1 the Deed Administrators consider (in their sole discretion) that it is no longer practicable or reasonable to continue to implement the Deed; or
- 21.3.2 an order is made by a Court requiring the Deed Administrators to call a meeting of Deed Creditors.

#### **21.4 Previous operation of this Deed preserved**

In accordance with Section 445H of the Act, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

#### **21.5 Deregistration**

Each person bound by this Deed acknowledges that following Pooling the Deed Administrators intend to apply to ASIC to deregister the Company.

### **22 MEMBERS BOUND BY DEED**

Members consent to the Deed and appoint the Deed Administrators as their proxies or attorneys to vote and pass resolutions to give effect to the terms of the Deed.

### **23 ADMINISTRATORS' REMUNERATION AND COSTS**

#### **23.1 Voluntary Administrators' Remuneration**

The Voluntary Administrators shall be:

- 23.1.1 remunerated by the Company or AAL in respect of any work done by the Voluntary Administrators, and any partner or employee of the Voluntary Administrators acting on behalf of the Voluntary Administrators, in connection with the performance of their duties, obligations and responsibilities as administrators of the Company at the scale of rates charged from time to time for the provision of services during the period of the Company's administration or as otherwise agreed by the Committee of Creditors and the Voluntary Administrators; and
- 23.1.2 reimbursed by the Company or AAL in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities as administrator of the Company.

## 23.2 Deed Administrators' Remuneration

The Deed Administrators shall be:

- 23.2.1 remunerated by the Company or AAL in respect of any work done by the Deed Administrators, and any partner or employee of the Deed Administrators acting on behalf of the Deed Administrators, in connection with the performance of their duties, obligations and responsibilities under the Deed at the scale of rates charged from time to time for the provision of services during the period of the Company's administration or such greater sum as agreed by the Committee of Creditors and the Deed Administrators pursuant to Clause 25.2.4; and
- 23.2.2 reimbursed by the Company or AAL in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities under this Deed.

## 24 VOLUNTARY AND DEED ADMINISTRATORS' INDEMNITY

### 24.1 Indemnity

The Voluntary Administrators and the Deed Administrators shall be indemnified out of the assets of the Company and AAL for:

- 24.1.1 all loss and damage suffered by them as a consequence of or arising out of the Company or AAL failing to comply with its obligations under Clauses 23.1 and 23.2;
- 24.1.2 all debts payable, liabilities incurred by and claims against the Voluntary Administrators (present or future, certain or contingent, ascertained or sounding only in damages) in relation to the administration of the Company, including any amounts payable by the Voluntary Administrators by virtue of Section 443A of the Act or by virtue of them having agreed to treat a payment obligation as if it were a debt arising under Section 443A of the Act; and
- 24.1.3 all debts payable, liabilities incurred by and claims against the Deed Administrators (present or future, certain or contingent, ascertained or sounding only in damages) in relation to the administration of the Deed or their acting as Deed Administrators, including any amounts held by a court to be or agreed or accepted by

the Deed Administrators as being payable by the Deed Administrators for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of, or in the possession of, the Company; and

- 24.1.4 all other costs, expenses, losses and liabilities incurred or suffered by them in performing any of their functions, duties or obligations, or exercising any of their powers, under or in accordance the Act, any other applicable law, or the Deed in connection with their administration of the Company.

## 24.2 Indemnity Not Affected

The indemnity under Clause 24.1 shall not affect or prejudice any rights that the Voluntary Administrators or Deed Administrators may have against the Company, AAL or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Voluntary Administrators or the Deed Administrators of or incidental to the exercise or performance of any of the powers or authorities conferred on the Voluntary Administrators or the Deed Administrators at law, by this Deed or otherwise.

## 24.3 Continuing Indemnity

Each indemnity in this Clause is a continuing indemnity and shall enure for the benefit of the Voluntary Administrators and the Deed Administrators' Legal Personal Representatives notwithstanding:

- 24.3.1 cessation of the Voluntary Administration Period or the Deed Period;
- 24.3.2 the termination of this Deed for any reason whatsoever; and
- 24.3.3 removal of the Deed Administrators and appointment of a new administrator of the Deed,

and shall not be affected or limited in any way by any defect or invalidity in the appointment of either the Voluntary Administrators or the Deed Administrators. The indemnity shall extend to cover all actions, suits, proceedings, accounts, liabilities, claims and demands arising out of any defect in the appointment of the Voluntary Administrators or the Deed Administrators or any defect in the approval or execution of this Deed or otherwise.

For the avoidance of doubt, the Voluntary Administrators and the Deed Administrators acknowledge that this Deed and any drafts of

it published on the Administrators' Website does not and never did contain any provision indemnifying the solicitors for the Voluntary Administrators or the Deed Administrators.

#### **24.4 Section 451C**

All persons bound by this Deed acknowledge and agree that a payment made, transaction entered into or any other act or thing done in good faith by, or with the consent of, the Voluntary Administrators:

24.4.1 is valid and effectual for the purposes of the Act; and

24.4.2 is not liable to be set aside in a winding up of the Company.

### **25 COMMITTEE OF CREDITORS**

#### **25.1 Composition of Committee**

25.1.1 There shall be a Committee of Deed Creditors comprising those persons elected to the committee of creditors at the meeting of creditors of the Company convened by the Voluntary Administrators pursuant to Section 436E save for the Air New Zealand and Qantas representatives and any other persons who have resigned or shall resign from the committee.

25.1.2 The representatives shall otherwise be selected from amongst the creditor groups by the Deed Administrators from those presently appointed to the committee of creditors who nominate themselves for such purpose.

#### **25.2 Function**

The function of the Committee shall be:

25.2.1 to consult with the Deed Administrators about matters relating to the administration;

25.2.2 to receive and consider reports by the Deed Administrators;

25.2.3 to fix and approve the Voluntary Administrators' remuneration in accordance with the order of the Court in proceeding no. V3065 of 2001 (a copy of which is attached as Exhibit 8); and

25.2.4 to consider and if appropriate agree with the Deed Administrators (as the case may be) to increase the Deed Administrators' remuneration.

### **25.3 No Directions to Deed Administrators**

The Committee cannot give directions to the Deed Administrators.

### **25.4 Rules**

The following rules apply to the Committee:

25.4.1 each member of the Committee must be a Deed Creditor, an attorney of a Deed Creditor or a person otherwise authorised in writing by a Deed Creditor to be a member of the Committee;

25.4.2 a Deed Creditor is not entitled to have more than one representative (including the Deed Creditor himself or herself, if a natural person) on the Committee;

25.4.3 minutes of all resolutions and proceedings of each meeting of the Committee shall be made and entered in books to be provided from time to time for that purpose by the Deed Administrators;

25.4.4 if the minutes of a meeting purport to be signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Committee, the minutes are prima facie evidence of the matter contained in them;

25.4.5 unless the contrary is proved, the meeting is taken to have been properly convened and all proceedings taken at the meeting are taken to have been duly passed and taken; and

25.4.6 a corporation (being otherwise qualified for membership of the Committee) is entitled to be a member and may appoint a person to represent it on the Committee.

### **25.5 No remuneration for members of the Committee**

25.5.1 A member of the Committee may be entitled to be reimbursed for the reasonable out of pocket expenses incurred by him or her in attending meetings of the Committee, as may be approved from time to time by the Committee in its absolute discretion, but shall not otherwise be entitled to claim or receive from the Company, the Deed Administrators or the Deed Creditors (other than, where applicable, the member's

appointer) any remuneration for acting as a member of the Committee and such reimbursement shall form part of the Deed Administrators' costs and expenses.

25.5.2 For the avoidance of doubt, the Deed Administrators acknowledge Clause 25.5.1, is intended to be and is an amplification of the outline of this Deed contained in the Section 439A(4) statement dated 15 March 2002, and expressly authorises the Deed Administrators if requested by the Committee to do so to reimburse to Committee members the cost of telephone calls into the conference facilities to be established in holding meetings of the Committee.

## **26 MEETINGS OF DEED CREDITORS**

### **26.1 When Meeting may be Convened**

The Deed Administrators:

26.1.1 may at any time convene a meeting of the Deed Creditors; and

26.1.2 shall convene a meeting of Deed Creditors if so requested in writing by creditors the value of whose claims against the Company is not less than ten percent (10%) of the value of all creditors' claims against the Company.

### **26.2 Voting at Meetings**

Deed Creditors shall be entitled to vote at these meetings on the same basis as if the meeting were a second meeting of creditors under Section 439A of the Act.

### **26.3 Concurrent Meetings**

The Deed Creditors acknowledge that meetings of the creditors of the Company may be held concurrently with meetings of creditors of other Ansett Group Companies.

### **26.4 Notice of Meeting**

Written notice shall not be sent by post to Deed Creditors of any further meetings. The Notice of Meeting shall be advertised in newspapers nationally and on the Administrators' Website.



## **26.5 Conduct of Meetings**

Regulations 5.6.12 to 5.6.36A of the Regulations apply to meetings of Deed Creditors held under this Deed, as if references to “the Liquidator”, “the Liquidator or Provisional Liquidator”, “the Liquidator, Provisional Liquidator or Chairman” or “a Liquidator, Provisional Liquidator or Trustee for Debenture Holders”, as the case may be, were references to the Deed Administrators, and with such other modifications as are necessary to comply with the provisions of this Deed.

## **27 FORUM SHOPPING**

All persons bound by the Deed agree that any application or proceedings concerning the Deed or a Claim shall only be made to or brought in the Court, unless otherwise agreed in writing by the Deed Administrators or unless the Court does not have jurisdiction to deal with such applications or proceedings.

## **28 JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria.

## **29 SEVERANCE**

Any provision of the Deed which:

### **29.1 Court order – unfair prejudice**

the Court determines to be oppressive or unfairly prejudicial, or unfairly discriminatory against, one or more creditors of the Company; or

### **29.2 General**

is otherwise prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction,

shall, to the extent permitted by the Court or such law, be severed from the Deed and rendered ineffective so far as is possible without modifying the remaining provisions of this Deed. Where, however, the provisions of any such applicable law referred to in Clause 29.2 may be waived, they are hereby waived by persons bound by the Deed to the full extent permitted by such law to enable the Deed to constitute a valid and binding obligation enforceable according to its terms.



### **30 REPORTING**

Except as required by law, the Deed Administrators shall not be required to report to Deed Creditors. However, the Deed Administrators may, in their absolute discretion, report to Deed Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Deed Creditors.

### **31 FURTHER ASSURANCES**

All persons bound by this Deed shall exercise all such powers as are available to them do all such acts and things, sign execute and deliver all such documents and instruments and provide assistance and co-operation as may be reasonably required to give full effect to the provisions of the Deed.

### **32 LIQUIDATION**

Where:

#### **32.1 Section 445F Meeting**

at a meeting convened under Section 445F of the Act the Deed Creditors pass a resolution terminating the Deed; and

#### **32.2 No Proposed Resolution to Wind-up Required**

whether or not the notice of that meeting set out a proposed resolution that the Company be wound up,

the Deed Creditors may also resolve at the meeting that the Company be wound-up.

### **33 SECTION 513C DAY**

For the avoidance of doubt, if the Deed Creditors resolve to wind-up the Company, the winding up will be deemed to have begun or commenced on the date on which the administration of the Company began.

### **34 POWER OF ATTORNEY**

The Company hereby irrevocably appoints the Deed Administrators its attorney to the exclusion of any Ansett Group Company to exercise or refrain from exercising (in the Deed Administrators' absolute discretion) any and all of the Company's rights or powers in relation to or in connection with its right, title and interest in all the property of the Company and the



Company shall make, do and provide all things and documents reasonably necessary to give proper effect to this Clause.

### **35 COMPANY NOT TO PROSECUTE**

The Company agrees not to make any demand, issue any proceedings or otherwise prosecute any action or cause of action which any way relates directly or indirectly in relation to the property of the Company without the prior consent of the Deed Administrators.

### **36 APPLICATION TO COURT**

#### **36.1 Directions**

The Deed Administrators may at any time apply to the Court for directions in relation to any particular matter arising under this Deed or about how Part 5.3A of the Act is to operate in relation to the Company.

#### **36.2 Unforeseen Circumstances**

If any circumstances arise for which this Deed does not either expressly or by necessary implication make provision for, the Deed Administrators may in their sole and absolute discretion make such provision as they think fit for the purpose of effectuating this Deed, and they may if they think fit apply to the Court for directions.

### **37 VARIATION**

The provisions of this Deed may be varied by Resolution passed at a meeting of Deed Creditors convened under Section 445F of the Act, but only if the variation is not materially different from a proposed variation set out in the notice of meeting.

### **38 WAIVER**

The waiver by any of the persons bound by the Deed in respect of any breach by another person bound by the Deed of any of the provisions of the Deed shall not be deemed to be a waiver in respect of any other breach or of any subsequent similar breach by a person bound by the Deed and no delay or omission on the part of a person to exercise or avail itself of any rights accruing to it under the Deed shall operate as a waiver in respect of any default by another person under the Deed.



## 39 NOTICES

All notices, requests, demands, requisitions, approvals, elections, consents or other communications (“notices”) required to be given or served to or upon any of the parties pursuant to or in connection with the Deed shall be in writing in the English language and shall be deemed to be duly given or made when delivered (in the case of facsimile provided confirmation of transmission has been received) to the party to which such notice is given or served at the address of such party as follows:

### 39.1 If to the Voluntary Administrators or the Deed Administrators:

Address: C/- Arnold Bloch Leibler

333 Collins Street, Melbourne, Victoria, Australia

Attention: Mr Leon Zwier

Facsimile: (03) 9229 9603

### 39.2 If to the Company:

Address: C/- Arnold Bloch Leibler

333 Collins Street, Melbourne, Victoria, Australia

Attention: Mr Leon Zwier

Facsimile: (03) 9229 9603

or at such other address as the relevant party may hereafter specify for such purpose to the other parties by notice in writing. A written notice includes a notice by facsimile. Any notice given by facsimile on a day which is not a business day shall be deemed despatched on the next succeeding Business Day. Any such notice may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person thereof.

## 40 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instruction.



#### **41 ACKNOWLEDGEMENT**

Each Acknowledging Ansett Group Company acknowledges and agrees in favour of each other party that it will execute a deed of company arrangement in respect of itself in the same form (mutatis mutandis) as this Deed.



**EXECUTED** as a Deed.

**SIGNED SEALED AND DELIVERED** by )  
**MARK FRANCIS XAVIER MENTHA** )  
(Voluntary Administrator) in the presence )  
of: )

Witness

Name of Witness  
(Print)

**SIGNED SEALED AND DELIVERED** by )  
**MARK ANTHONY KORDA** (Voluntary )  
Administrator) in the presence of: )

Witness

Name of Witness  
(Print)

**SIGNED SEALED AND DELIVERED** by )  
**MARK FRANCIS XAVIER MENTHA** )  
(Deed Administrator) in the presence of: )

Witness

Name of Witness  
(Print)



**SIGNED SEALED AND DELIVERED** by )  
**MARK ANTHONY KORDA** (Deed )  
Administrator) in the presence of: )  
)

Witness

Name of Witness  
(Print)

**EXECUTED** for and on behalf of each )  
company named in Part 1 of Schedule 1 ).....  
by its administrators **MARK ANTHONY** ) **Mark Anthony Korda**  
**KORDA** and **MARK FRANCIS XAVIER** )  
**MENTHA** in accordance with the )  
Corporations Act in the presence of: ).....  
) **Mark Francis Xavier Mentha**  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print name of Witness



Mark Francis Xavier Mentha  
(Voluntary Administrator)

and

Mark Anthony Korda  
(Voluntary Administrator)

and

Mark Francis Xavier Mentha  
(Deed Administrator)

and

Mark Anthony Korda  
(Deed Administrator)

and

Each Acknowledging Ansett Group Company

and

[Each Ansett Group Company  
(each subject to a Deed of Company Arrangement)  
other than Ansett Australia Limited  
(subject to Deed of Company Arrangement)]  
(Company)

## Deed of Company Arrangement

Arnold Bloch Leibler  
Ref: LZ:FEH: 01-1201846  
C:\DOCUME~1\awk\LOCALS~1\Temp\tmp5C.tmp



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