

IN THE FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY

No. V621 of 2005

IN THE MATTER OF ANSETT AUSTRALIA LIMITED  
(ACN 004 209 410) & ORS (in accordance with the  
Schedule attached) (All Subject to a Deed of  
Company Arrangement)

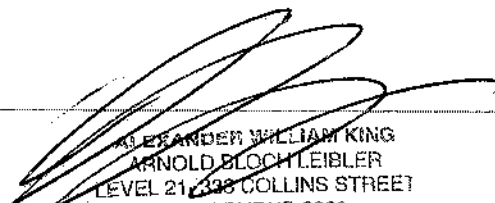
and

MARK ANTHONY KORDA and MARK FRANCIS  
XAVIER MENTHA (as Deed Administrators of the  
Companies)

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-45**" produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit dated 12 September 2005.

Before me:

  
ALEXANDER WILLIAM KING  
ARNOLD BLOCH LEIBLER  
LEVEL 21, 398 COLLINS STREET  
MELBOURNE 3000  
A NATURAL PERSON WHO IS A CURRENT  
PRACTITIONER WITHIN THE MEANING OF  
THE LEGAL PRACTICE ACT 1986

**Exhibit "MAK-45"**  
**Aeropelican Sale Agreement and**  
**Variation Documents**

'MAK-AS'

ANDERSEN LEGAL

6 March 2002

Amended by hand in  
accordance with attached  
correspondence between  
A.L. and EY Law  
by Matthew Roberts  
and initialled M.R.  
22/3/02

## Share Sale Agreement - Aeropelican Air Services Pty Limited (Subject to Deed of Company Arrangement)

Date 6 March 2002

**Bodas Pty Limited**  
(Administrators Appointed)  
ACN 002 158 174

**IAP Group Australia Pty Limited**  
ACN 003 675 867

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**Parties**

**Bodas Pty Limited (Administrators Appointed)**  
ACN 002 158 174 (acting by the Administrator)  
(Seller)

**IAP Group Australia Pty Limited**  
ACN 003 675 867  
(Buyer)

## Background

- A The Seller is the registered holder of all of the Shares.
- B The Administrator was appointed administrator of the Seller and of the Company on 17 September 2001 pursuant to an order of the Federal Court, following the initial appointment of administrators on 12 September 2001.
- C The Administrator proposed and the Company's creditors resolved in favour of the Company executing a deed of company arrangement in respect of the Company (DOCA) if the Seller agrees to hold the Trust Monies on trust for the creditors of the Company on the terms of the Pelican Trust. The DOCA was executed on 15 February 2002 and amongst other things, releases and extinguishes all Pre-Administration Claims against the Company. The Administrator is the deed administrator under the DOCA.
- D The Seller has agreed to sell and the Buyer has agreed to purchase the Shares on the terms and conditions set out in this agreement.

## Provisions

The interpretation provisions of this agreement (including definitions) are in schedule 1. The schedules and any annexures form part of this agreement.

### 1 Agreement to sell and purchase

#### 1.1 Sale and purchase

The Seller agrees to sell and transfer to the Buyer and the Buyer agrees to purchase and receive from the Seller, on the terms and conditions of this agreement, the Shares for the Trust Monies.

#### 1.2 Title, property and risk

- a) The Shares will be transferred from the Seller to the Buyer on the Completion Date.
- b) Until the Completion Date, risk in the Shares remains with the Seller. On the Completion Date, risk in the Shares will pass to the Buyer. Legal title to the Shares will pass to the Buyer on

registration by the Company of the share transfers for the Shares.

## **2 Payment of Trust Monies**

The Trust Monies in respect of the sale of the Shares is comprised of, and will be paid in, the following instalments:

- a) the Deposit; and
- b) \$5,750,000, which is to be paid by bank cheque in favour of the Seller and delivered to the Seller on the Completion Date.

## **3 Interest on Overdue Amounts**

- a) If a party fails to pay another party an amount due to that party under this agreement on the due date, it must also pay interest on that amount from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with clause 3b).
- b) Interest on an unpaid amount accrues daily (for any day) at the Reserve Bank bank bill rate plus 3 per cent and is capitalised (if not paid) at the end of that day.
- c) This clause 3 does not affect the defaulting party's obligation to pay each amount under this agreement when it is due.

## **4 Conduct pending Completion**

### **4.1 Actions by the Seller prior to Completion**

Prior to Completion the Seller will procure that the Administrator removes all directors of the Company as at 12 September 2001 pursuant to its powers under section 442A of the *Corporations Act 2001* and will deliver to the Buyer on Completion a completed form 304.

### **4.2 Conduct of Business**

- a) Until Completion, the Seller must ensure that the Company:
  - i) does not enter into any new material contract or arrangement without the prior written consent of the Buyer; and
  - ii) carries on the Business in a normal, proper and efficient manner and in the ordinary course.
- b) Without limiting clause 4.2(a)(ii), the Seller must:
  - i) maintain scheduled flight services;
  - ii) in accordance with existing work practices, maintain and service all aircraft owned by the Company; and

- iii) maintain existing insurance policies in respect of the Business.

#### 4.3 Access

Before the Completion Date, the Seller must procure that the Company:

- a) gives reasonable access to the Buyer and its representatives, during normal business hours and on reasonable notice, to inspect the Records and the assets and undertakings of the Company; and
- b) furnishes the Buyer with all such information, in the possession or under the control of the Company, as may be reasonably requested by the Buyer and its representatives concerning the Company.

### 5 Completion

#### 5.1 Time and place of Completion

Completion will occur on the Completion Date at the offices of Andersen Legal at 363 George Street, Sydney, New South Wales, or at a time agreed to by the parties in writing or at any other place agreed in writing by the parties.

#### 5.2 Seller's obligations at Completion

5.3

Subject to the Buyer satisfying its obligations under clause ~~5.2~~, the Seller will, on Completion:

- a) Give and deliver to the Buyer:
  - i) the share certificates for the Shares;
  - ii) completed transfers of the Shares in a form that complies with the Company's constitution, duly executed in favour of the Buyer as transferee;
  - iii) the Records and the Delivery Documents which are in the possession or under the control of the Company at Completion;
  - iv) all keys (and other access devices) to the business premises owned by the Company; and
  - v) a copy of a notification to the Australian Taxation Office deleting the Company from the Ansett Group's GST Group Registration.

In the case of the items referred to in clause 5.2a)iii) and 5.2a)iv), delivery is to be made by leaving those items in a safe and appropriate place at the Company's principal place of business or at such other place as the parties may agree.

- b) Subject to Completion, the Seller will appoint as directors of the Company the persons nominated, in writing by the Buyer,

at least five Business Days prior to Completion, effective as at Completion.

- c) Procure that the Company transfers the Receivables to the Seller in accordance with clause 7a).
- d) Procure that all aircraft currently owned by the Company are delivered to the Buyer in operating condition (which the Seller will use reasonable endeavours to procure) If any aircraft is not delivered in operating condition, the amount to be paid under clause 2(b) will be adjusted by agreement between the parties and failing agreement, will be determined under clause 12).

### **5.3 Obligations of the Buyer at Completion**

Subject to the Seller satisfying its obligations under clause 5.2 (Seller's obligations at Completion), the Buyer will on Completion pay to the Seller or the Seller's nominee, by bank cheque the monies specified in clause 2b).

### **5.4 Obligations of the Administrator at Completion**

Subject to the Seller satisfying its obligations under clause 5.2 and the Buyer satisfying its obligations under clause 5.3, the Administrator will on Completion give and deliver to the Buyer:

- a) a copy of an ASIC Form 509G "Notification of termination of deed of company arrangement"; and
- b) a copy of an ASIC Form 505 "Notification of appointment or cessation of an external auditor".

The Seller will use reasonable endeavours to lodge these forms on the Completion Date.

### **5.5 Interdependency**

The obligations of the parties in respect of Completion are interdependent. All things or actions required to be done at Completion will be treated as having taken place simultaneously and (unless all of the parties agree in writing to the contrary) no delivery or payment will be treated as having been made until all deliveries and payments due to be made at Completion have been made. Completion will be taken for all purposes not to have occurred unless and until all those deliveries and payments have been made unless both parties agree in writing to the contrary.

### **5.6 Time is of the essence**

Time is of the essence in relation to the obligations of the Seller under this clause 5.

## **6 Superannuation**

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### **6.1 Access to superannuation funds information**

The Seller agrees that it will ensure that before the Completion Date the Buyer is provided with all records and information which the Buyer (or any actuary appointed by the Buyer) may require (including detailed information about each Employee's Superannuation Plan and the Company's Superannuation Commitments) in order to enable Aeropelican Air Services Pty Limited to maintain responsibility for and administer superannuation arrangements and Superannuation Commitments of the Company. This obligation extends to any records, information or systems, which are recorded, maintained or otherwise dependent on any computerised or similar system or service.

## **7 Receivables**

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- a) The Buyer and the Seller acknowledge that the Receivables are excluded from the Assets of the Company and that the Company will transfer the Receivables to the Seller on Completion.
- b) On and from Completion, the Buyer shall not actively collect the Receivables but if the Buyer receives any of the Receivables, it shall pay them where possible into a bank account nominated by the Administrator, and failing that, into a separate bank account earmarked as a trust account, hold the proceeds on trust for the Seller and forthwith pay them in full to the Administrator without deduction, lien or set-off. Where any general or unapportioned payment is received from a customer of the Business, the payment shall be appropriated in the first instance to the oldest outstanding invoice, and, where that is a Receivable, paid into the Administrator's account or trust account.
- c) The Buyer shall provide at the Seller's expense any statements of account, bank statements and other documentation and information which the Seller shall from time to time reasonably require, in order that the Seller may be satisfied that the Buyer is complying in all respects with the provisions of clause 7b).

## **8 Buyer's post-Completion Obligations**

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### **8.1 Administrator Contracts**

After Completion, the Buyer will procure that the Company perform the obligations relating to, and satisfies all the liabilities arising from, all of the Administrator Contracts.



## **8.2 Access**

After Completion, at the request of the Seller, the Buyer agrees to provide, at the reasonable cost of the Seller, and procure that the Company will provide, such information and documents in its possession or control, and such assistance as it is able to give, to the Seller in connection with:

- a) the conduct of the administration (including reasonable requests of third parties) of the Company and/or the Seller; and
- b) the conduct of the matters referred to in clause 9 (Seller's obligations following Completion).

## **8.3 CASA obligations relating to the Business**

- a) On and from Completion, the Buyer must assume, perform and discharge:
  - i) all of the obligations owed by the Company to the CASA in relation to the operation of the Business; and
  - ii) all liabilities of the Seller, Company and the Administrator to CASA in relation to the operation of the Business; and
- b) From the Completion Date the Buyer is solely responsible for and indemnifies, and must keep indemnified, the Seller and the Administrator against all liability, costs, charges and expenses incurred in connection with, any claims brought by the CASA for matters relating to the operation of the Business after Completion.

## **8.4 Employee obligations**

The Buyer acknowledges that on and from Completion it:

- a) will procure that Aeropelican Air Services Pty Limited will employ not less than 15 employees of the Company, on terms no less favourable than those under which they are presently employed, to be nominated by the Buyer to the Seller in a list to be provided to the Seller at least 10 Business Days prior to the Completion Date;
- b) must assume, perform and discharge all of the obligations and liabilities owed by the Company, the Seller or the Administrator in relation to the Accrued Employee Entitlements arising out of each Nominated Employee's Prior Service; and
- c) is solely responsible for and indemnifies the Seller, the Company and the Administrator against all liability, or loss arising out of, and all costs, charges and expenses incurred in connection with any claims brought by a Nominated Employee for any Accrued Employee Entitlements to which a Nominated Employee is or may become entitled to and which relates to that person's Prior Service.

## **9 Seller's obligations following Completion**

The Seller acknowledges that it is responsible for:

- a) all of the Company's Superannuation Commitments in respect of the Nominated Employees between 12 September 2001 and the Completion Date;
- b) all taxes including without limitation amounts, if any, owing to the Commissioner for Taxation by the Company up to the Completion Date;
- c) dealing with any litigation which has been commenced against the Company as at the Completion Date;
- d) the amounts owing by the Company as at the Completion Date to third parties for services provided or goods actually delivered by those third parties to the Company and utilised by the Company, or for which the Company has had the benefit of, in the period from 12 September 2001 to the Completion Date; and
- e) the Seller will terminate the employment of, and the Seller and the Administrator will be liable for any claims by any employees of the Company who are not Nominated Employees.

## **10 Actions by Claimants following Completion**

### **10.1 Buyer's discretion to return Assets**

- a) If any of the Assets are or are found to be subject to a Claim by a Claimant, the Buyer will procure that the Company, at its discretion:
  - i) return such Asset to the Claimant (Returned Asset); or
  - ii) make such payment to or arrangements with the Claimant as may be reasonably necessary to resolve the Claim (Claimant Payment).
- b) At the Seller's request, the Buyer will, at its own cost, keep the Seller informed of the current position regarding all such Claims.

### **10.2 Seller may deal with Claim**

Notwithstanding the Buyer's obligations under clause 10.1 (Buyer's discretion to return Assets), if the Buyer has informed the Seller of a Claim in relation to an Asset and:

- a) the Seller reasonably concludes that the Buyer or the Company (as the case may be) is not dealing with the Claim with due expedition or in the interests of the Administrator or the Seller; or

- b) if the Seller:
  - i) is served with proceedings in respect of the Claim; or
  - ii) reasonably concludes that such service is imminent,

the Seller may deal as it thinks fit with that Claim made, or proceedings brought against the Seller, by a Claimant and in that event the Seller will keep the Buyer informed on a timely basis of all material developments on that Claim.

### 10.3 Removed Assets

- a) If a Claimant:
  - i) refuses to sell or otherwise make available any Assets to the Company; or
  - ii) requires the Buyer or the Company to deliver up such Assets or any part of them,

the Buyer agrees that the Seller will be entitled by written notice to the Buyer to remove any such Assets (Removed Assets) from the control of the Company.

- b) Subject to clause 10.3a), the Buyer must, immediately upon receipt of a notice under clause 10.3a), procure that the Company permit any Removed Assets still in the possession or control of the Company to be repossessed by the Seller and sign such documentation as may reasonably be required for that purpose.
- c) If the Company is unable, or otherwise fails, to make any Removed Assets available for repossession by the Seller in accordance with clause 10.3b), the Buyer will indemnify the Seller fully and completely against all actions, proceedings, claims, demands, costs, expenses, damages, penalties and liabilities whatsoever which may be brought against or incurred by the Seller (otherwise than as an unsecured liability) in connection with those Removed Assets.

### 10.4 Payments

In the event of:

- a) the return under clause 10.1a)i) of a Returned Asset; or
- b) the payment under clause 10.1a)ii) of a Claimant Payment; or
- c) the removal under clause 10.3 (Removed Assets) of a Removed Asset,

the Seller will, as an expense of the administration, pay to the Buyer a sum equal to:

- d) in respect of a Returned Asset or a Removed Asset, the price attributable to that Returned Asset or Removed Asset, as the case may be, being the market value of the Returned Asset or Removed Asset as at the date of return or removal; or,

e) in respect of a Claimant Payment, the amount paid by the ~~Seller~~ Buyer to the Claimant to resolve that Claim.

Referring to the ~~price(s)~~ <sup>market value</sup> specified in paragraph d), such ~~price(s)~~ <sup>market value</sup> will be agreed between the Seller and the Buyer and, failing agreement, be determined in accordance with the provisions of clause 12 (Expert Determination).

## 10.5 Time limits

The Seller acknowledges that the Buyer will have a right of recourse against the Trust Monies to the extent of any Claim made under this agreement for a period of 6 months following the Completion Date. The Seller will retain a minimum of \$500,000 in an interest bearing account for a period of at least 6 months to deal with any Claims.

## 10.6 Maximum aggregate liability

The maximum aggregate amount, which the Buyer may recover from the Seller in respect of all Claims, is an amount equal to the Trust Monies.

## 11 Administrator

### 11.1 Buyer not contracting with Administrator

The Buyer acknowledges that the Buyer is not contracting with the Administrator personally but rather is contracting with the Seller. The Administrator is the agent of the Seller, and will not incur any personal liability to the Buyer on any basis whatsoever.

### 11.2 Buyer's Obligations

a) The Buyer must pay the Seller all reasonable costs, fees, expenses, damages and liabilities (including the cost of defending or settling any action or claim) directly incurred by the Seller as a result of any breach by the Buyer (whether intentional or negligent) of this agreement including the Buyer's failure to satisfy its obligations under this agreement on or by the Completion Date. Nothing in this clause imposes any liability for any indirect or consequential loss of the Seller.

b) For the purposes of clause ~~Error! Reference source not found.~~ <sup>11.2 (a)</sup> reasonable costs, fees, expenses, damages and liabilities (including the cost of defending or settling any action or claim) incurred by the Administrator as a result of any breach by the Buyer (whether intentional or negligent) of this agreement including the Buyer's failure to satisfy its obligations under this agreement on or by the Completion Date, are deemed to be costs, fees, expenses, damages and liabilities incurred by the Seller including any costs associated with any subsequent resale of the Shares or assets of the Business

## **12 Expert Determination**

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### **12.1 Referral to Expert**

If the Seller and the Buyer are unable or unwilling to agree to a price to be paid by the Seller to the Buyer for a Removed Asset <sup>or a Returned</sup> under clause 10.4 (Payment) or amount under clause 5.2, within 10 Business Days after the Seller has been given notice by the Buyer, then the Seller or the Buyer may refer those matters in dispute to an Expert for an Expert Determination.

### **12.2 Buyer must give access**

The Buyer must provide, and must procure that the Company provides, such information and documents in its possession or control and such assistance as it is able to give that the Expert may reasonably require for the purposes of making the Expert Determination in accordance with clause 12.1 (Referral to Expert).

## **13 Confidentiality**

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### **13.1 The Seller's obligations**

After Completion, the Seller must not, and must ensure that its officers and employees do not, without the prior written consent of the Buyer, use or disclose the Confidential Information except as required by law.

### **13.2 Confidentiality of agreement**

The parties must maintain absolute confidentiality concerning the existence and the terms of this agreement. Subject to clause 13.3 (Exceptions), no public announcements or communications relating to the negotiations of the parties or the existence, subject matter or terms of this agreement may be made or authorised by or on behalf of a party without the prior written approval of the other parties.

### **13.3 Exceptions**

A party may make any disclosures in relation to this agreement as it, in its absolute discretion, believes is necessary:

- i) to the professional advisers, bankers, financial advisers and financiers or to any person whose consent is required under this agreement or for a transaction contemplated by this agreement if the person to whom disclosure is made has undertaken in writing to keep confidential any information so disclosed;
- ii) to comply with any applicable law or court proceedings or the requirements of any regulatory body or the rules of any stock exchange on which the shares of a party or any Associate of a party are listed; or

- iii) to the Employees to the extent necessary to reasonably communicate the sale and purchase to them and to induce them to enter employment contracts with the Buyer.

## **14 Costs and stamp duty**

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### **14.1 Costs Generally**

Except to the extent specified in clause 14.2 (Stamp duty), each party must bear and is responsible for its own costs in connection with the preparation, execution, Completion and carrying into effect of this agreement.

### **14.2 Stamp duty**

The Buyer must bear and is responsible for all stamp duty on or in respect of:

- a) this agreement;
- b) the sale, purchase, assignment or transfer of any dutiable property under this agreement; or
- c) any instrument or transaction contemplated by this agreement, excluding the Pelican Trust deed and any agreement pursuant to which assets of the Company are transferred from the Company prior to Completion.

## **15 GST**

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### **15.1 Representation and warranty**

The Buyer represents and warrants to the Seller and the Administrator that:

- a) immediately prior to any payment by it to the Seller under or by reason of this agreement the Buyer is Registered;
- b) from the time the Buyer is Registered until immediately after receipt by the Seller of the last payment to be made by the Buyer to the Seller under or by reason of this agreement, the Buyer shall remain Registered.

### **15.2 Taxable Supplies**

- a) Amounts payable under this agreement are exclusive of GST.
- b) If a Supply under this agreement by a party (Payee) to the other party (Payer) is a Taxable Supply then the Payer must pay to the Payee (without deduction or set-off) an additional amount (Additional Amount) determined by multiplying the amount payable in respect of that Supply by the Prevailing GST Rate.

**15.3 Payment on demand**

- a) The Payer must pay each Additional Amount at the same time as the amount payable for the Supply referable to it or upon demand by the Payee (whichever is the earliest) and whether that demand is by means of a Tax Invoice or otherwise.
- b) If an Additional Amount is paid in respect of a Supply, and that Supply is later determined not to be a Taxable Supply, that Additional Amount must be refunded to the payer.

**15.4 Survival**

The obligations in this clause 15 survive Completion.

**16 Notices****16.1 Notice provisions**

The provisions of this clause 16 apply to Notices.

**16.2 Form and delivery**

Unless this agreement states otherwise, each communication in connection with this agreement (including a notice, consent, request, waiver or demand):

- a) must be in writing, directed for attention as shown in clause 16.4 (Address details), or as last notified by the recipient; and
- b) must be:
  - i) delivered;
  - ii) sent by prepaid mail (airmail, if posted to or from overseas);
  - iii) faxed; or
  - iv) sent by email,

to the recipient's postal or email address or fax number shown in clause 16.4 (Address details), or to the address or fax number last notified by the recipient for this purpose.

**16.3 Receipt and effect**

A communication given in accordance with clause 16.2 (Form and delivery):

- a) is treated as having been received:
  - i) if delivered before 5:00pm (in the place it was delivered to) on a Business Day, on that day - otherwise on the next Business Day;
  - ii) if sent by mail, on the third Business Day (in the place it was sent from) after posting (or seventh if posted to or from overseas);

- iii) if sent by fax, on the date and time which the sending machine's transmission report indicates as the date and time the whole fax was sent. (However, if the report indicates the transmission was made on a day that is not a Business Day in the place it was sent to, or was not completed before 5:00pm in that place, then the communication is treated as having been received at 9:00am on the next Business Day in that place.);
  - iv) if sent by email, on the date and time at which it enters the recipient's information system (as shown in a confirmation of delivery report from the sender's information system). (However, if the report indicates the email was received on a day that is not a Business Day in the place of the recipient's postal address, or was not received before 5:00pm in that place, then the communication is treated as having been received at 9:00am on the next Business Day in that place.); and
- b) takes effect from the time it is received (or treated as received) unless a later time is specified in it.

**16.4 Address details**

**the Seller**

**Attention** Mark Korda and Mark Mentha  
**Address** c/- Andersen, 360 Elizabeth Street, Melbourne, Victoria, 3000  
**Fax** 03 9623 3663  
**Email** mark.korda@au.andersen.com and mark.mentha@au.andersen.com

**with a copy to**

**Attention** Martin Madden  
**Address** c/- Andersen, 363 George Street, Sydney, New South Wales, 2000  
**Fax** 02 9299 5608  
**Email** martin.x.madden@au.andersen.com



Buyer  
Attention  
Address  
Fax  
Email

### **16.5 Serving documents for proceedings**

Any document in connection with legal proceedings (including administrative law proceedings) may be served on a party by being delivered to that party's address last notified for service of notices under clause 16.2 (Form and delivery). This does not prevent any other method of service permitted by law.

## **17 General**

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### **17.1 Entire agreement**

This agreement sets out the entire agreement between the parties in relation to its subject matter (The Buyer acknowledges that the facsimile from Ernst & Young Law to Andersen Legal dated 5 March 2002 has been withdrawn). Accordingly, any thing (such as correspondence, negotiations or representations before this document is executed, or an arrangement or understanding not reflected in this agreement) does not bind the parties and may not be relied on by them.

### **17.2 Counterparts**

This agreement may be made up of counterparts (that is, more than one copy of the agreement, each signed by one or more of the parties - when taken together, the copies which, between them, are signed by every party are treated as being the one document).

### **17.3 Changes and waivers**

This agreement may only be amended in writing signed by all the parties. A provision of this agreement (including a condition precedent) may only be waived in writing signed by the person who has the benefit of the provision and who is therefore to be bound by the waiver.

### **17.4 Complying with conditions**

Each party agrees to comply with the conditions of any consent or waiver given by another party.

**17.5 Additional rights**

The rights, powers and remedies of each party under this agreement are additional to other rights, powers and remedies independently given by law.

**17.6 Contractual obligations and rights are not affected**

The obligations and rights of each party under this agreement are not affected by any law that, but for this clause, would affect those obligations and rights.

**17.7 Further steps**

Each party must do everything reasonably necessary (including executing or producing documents, getting documents executed or produced by others and obtaining consents) to give effect to the provisions of this agreement (including the transactions contemplated by it).

**17.8 Time conditions must be strictly complied with**

Time is of the essence in respect of obligations to pay money under this agreement.

**18 Governing law**

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This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

## Schedule 1 - Interpretation

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### 1 Definitions

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In this agreement, unless the context requires otherwise:

|                                      |  |
|--------------------------------------|--|
| <b>Accrued Employee Entitlements</b> | means the following adjusted, as at Completion: <ul style="list-style-type: none"><li>a) the accrued annual leave (including leave loading where applicable) entitlements of the Employees determined under any statute, industrial award, agreements approved or certified under any law or contracts of employment applicable to the Employees; and</li><li>b) the accrued long service leave entitlements of the Employees determined under any statute, industrial award, agreements approved or certified under any law or contracts of employment applicable to the Employees recognising Prior Service.</li></ul> |
| <b>Administrator</b>                 | means Mark Francis Xavier Mentha and Mark Anthony Korda.   |
| <b>Administrator Contracts</b>       | means each contract entered into by the Company on or after 12 September 2001 including: <ul style="list-style-type: none"><li>a) for the carriage of passengers by the Company;</li><li>b) for the carriage of freight by the Company; and</li><li>c) maintenance / service contracts in respect of any plant or equipment used by the Company.</li></ul>   |
| <b>Ansett</b>                        | means Ansett Australia Holdings Ltd ACN 004 216 291 (Administrators Appointed).  |

- Ansett Group** means Ansett and the companies listed in schedule 2.
- AOC** means the Company's air operator certificate being certificate number S085390-04.
- Assets** means the plant and equipment, inventory, rotables, consumables not subject to an equipment lease or hiring arrangement used by the Company in the Business as at the Completion Date excluding the engine presently in Canada for overhaul and one propeller located at Bankstown for repair.
- Associate** means:
- a) in relation to a corporation, any related body corporate, director or person who has a substantial holding (as that term is defined in section 9 of the *Corporations Act 2001*) or, any person with whom the body corporate is acting, or proposes to act in concert and any person with whom the body corporate is, or proposes to become, associated (whether formally or informally) in any other way;
  - b) in relation to a natural person, any spouse, or blood or adoptive relative of that person or that person's spouse or any corporation in respect of which the person is an Associate by virtue of paragraph a); and
  - c) in relation to a trust, any person who is a beneficiary under that trust.
- Business** means the airline business carried on by the Company of a commercial commuter, flight and freight service in New South Wales.

|                                 |  |
|---------------------------------|--|
| <b>Business Day</b>             | means a day on which banks are open for general banking business in Melbourne and Sydney except Saturdays, Sundays and public holidays.  |
| <b>CASA</b>                     | means the Civil Aviation and Safety Authority.   |
| <b>Claim</b>                    | means a claim, demand, action, proceeding or judgment made against a person, however arising and whether present or future, fixed or unascertained, actual or contingent but excludes Pre-Administration Claims.   |
| <b>Claimant</b>                 | means a secured creditor, owner or lessor who brings a Claim as described in clause 10.  |
| <b>Claimant Payment</b>         | has the meaning given in clause 10.1a)ii) (Buyer's discretion to return Assets).   |
| <b>Company</b>                  | means Aeropelican Air Services Pty Limited (subject to Deed of Company Arrangement) (ACN 000 653 083).   |
| <b>Completion</b>               | means completion of the sale and purchase of the Shares in accordance with clause 5 (Completion).  |
| <b>Completion Date</b>          | means 15 April 2002.   |
| <b>Confidential Information</b> | means all information relating to the Business or, the Company whether verbal or recorded on paper or by electronic means, but excludes information which is or subsequently becomes known or generally avail to the public otherwise than in consequence of a breach of this agreement. |

**Delivery Documents**

means originals and copies, in machine readable printed form, of all books, files, reports, records, correspondence, documents and material of the Company (or to which the Company is entitled) including:

- a) the AOC;
- b) aircraft maintenance manuals;
- c) aircraft wiring diagram manuals;
- d) aircraft illustrated parts catalogue;
- e) aircraft structural repair manual;
- f) aircraft component maintenance manual;
- g) manufacturers aircraft flight manual;
- h) aircraft manufacturers operating manual;
- i) aircraft weight and balance manual;
- j) aircraft weight and balance report;
- k) aircraft interior configuration layout drawing;
- l) aircraft emergency equipment layout drawing;
- m) aircraft detailed specifications;
- n) aircraft engine overhaul records;
- o) aircraft APU overhaul records;
- p) airframe overhaul records;

- Deposit** means the \$250,000 non refundable deposit which has been paid by the Buyer to the Seller.
- DOCA** means the deed of company arrangement referred to in Recital C.
- Employee** means each employee of the Company immediately prior to Completion.
- Employee Claims** means any claim by an Employee for, or relating to, Accrued Employee Entitlements.
- Expert** has the meaning given in paragraph (b) of the definition of "Expert Determination".
- Expert Determination** means the following procedure in relation to a dispute under clause 12 (Expert Determination):
- a) either the Seller or the Buyer requests a person nominated by the President for the time being of the Institute of Chartered Accountants in Australia, with appropriate industry expertise, to determine the dispute;
  - b) the person nominated under paragraph (a) of this definition (Expert) will act as an expert, not as an arbitrator in determining the dispute;
  - c) the determination of the Expert in relation to the dispute must be made as soon as possible after the Expert has been referred the dispute for determination and the Expert's decision will be final, conclusive and binding on the parties; and

- d) the cost of the Expert will be paid by the party against whom the determination of the Expert is made, and the Expert must make a decision on this matter. A decision so made will be final, conclusive and binding on the parties. In the event that the Expert is, for any reason whatsoever, unable to make a decision on the matter and so certifies to the parties, the cost of the Expert must be paid by the Seller and the Buyer in equal shares.

|                            |  |
|----------------------------|--|
| <b>Government Agency</b>   | means the governments of the Commonwealth and the State of New South Wales including any administrative body, department, commission, authority, instrumentality, tribunal, agency or entity of any such government. |
| <b>GST</b>                 | has the meaning given to that term in section 195-1 of <i>A New Tax System (Goods and Services Tax) Act 1999</i> .   |
| <b>GST Law</b>             | has the meaning given to that term in section 195-1 of <i>A New Tax System (Goods and Services Tax) Act 1999</i> .   |
| <b>Nominated Employees</b> | those employees listed in accordance with clause 8.4(a).   |
| <b>Notice</b>              | includes all notices, consents, requests, waivers, demands or other communications by a party to another party permitted or required by this agreement.  |
| <b>Pelican Trust</b>       | means the trust as comprised in the trust deed on or about the date of this agreement.   |



**Pre-Administration Claim**

means as at 12 September 2001 a debt owing (whether then, now or in the future) by, or a claim subsisting against, the Company in favour of a person irrespective of whether the debt or claim arose by virtue of contract, at law, in equity or otherwise and includes a claim sounding only in damages or a debt or claim arising pursuant to any guarantee other than Employee Claims and claims by secured creditors, owners and lessors of the Company who have not voted in favour of the DOCA referred to in Recital C.

**Prevailing GST Rate**

is the rate specified in the GST Law which the parties agree is initially 10%.

**Prior Service**

means, subject to all applicable laws, industrial awards, agreements approved or certified under any law and contracts of employment, the period of service which that Employee had with the Company or any other employer before, and which is continuous until, that Employee's commencement of employment with the Buyer.

**Receivables**

means debts (including GST if applicable) owing to the Company by customers of the Business in respect of services provided by the Company to those customers up to and including the Completion Date.

**Records**

means originals and copies, in machine readable printed form, of all books, files, reports, records, correspondence, documents and material of the Company (or to which the Company is entitled) including:

- a) minute books, statutory books and registers, books of account, and copies taxation returns;
- b) certificates of registration, certificates of on change of name constitution;

- c) the Company's constitution;
- d) all current permits, licences and other documents issued to the Company under any legislation or ordinance;
- e) sales literature, market research reports, brochures and other promotional material;
- f) all sales and purchasing records;
- g) all trading and financial records;
- h) all lists of all regular suppliers and customers; and
- i) all other corporate paraphernalia of any kind including all common seals.

|                                  |   |
|----------------------------------|---|
| <b>Registered</b>                | has the meaning given to that term in the GST Law.  |
| <b>Removed Asset</b>             | has the meaning given in clause 10.3a) (Removed Assets).  |
| <b>Returned Asset</b>            | has the meaning given in clause 10.1a)i) (Buyer's discretion to return Assets).   |
| <b>Shares</b>                    | means all the issued shares in the capital of the Company, being 33,500 ordinary shares.  |
| <b>Superannuation Commitment</b> | means any legal liability (whether arising under an industrial award or agreement or otherwise) or voluntary commitment to make contributions to any Superannuation Plan which will provide the Employees or their respective dependants with pensions, annuities, lump sums or any other payments upon retirement or earlier death or otherwise. |

|                            |  |
|----------------------------|--|
| <b>Superannuation Plan</b> | means all superannuation schemes, retirement benefit schemes or other pension schemes or arrangements and all employment benefit plans, programs or arrangements such as medical, dental or life insurance to which the Company is a party or which are or have been made available or procured for the Employees. |
| <b>Supply</b>              | has the meaning given to that term in the GST Law.   |
| <b>Tax Invoice</b>         | has the meaning given to that term in the GST Law.   |
| <b>Taxable Supply</b>      | has the meaning given to that term in the GST Law.   |
| <b>Trust Monies</b>        | means the amount of \$6,000,000 comprised of the Deposit and the amount to be paid by the Buyer to the Seller in accordance with clause 2b).   |

## 2 General terms

In this agreement, unless the context requires otherwise:

- a) a reference to any thing (including an amount or a provision of this agreement) is a reference to the whole and each part of it;
- b) the singular includes the plural, and vice versa;
- c) the word 'person' includes an individual, a body corporate, a firm, an unincorporated body, a society, an association and an authority (including a Government Agency);
- d) a reference to a particular person includes their legal personal representatives, administrators, liquidators, successors, substitutes and permitted assigns;
- e) the word 'costs' includes charges, expenses and legal costs;
- f) a reference to a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
- g) an agreement, representation or warranty by 2 or more persons binds both or all of them jointly and each of them individually;
- h) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of both or all of them jointly and each of them individually;
- i) a reference to a document or an agreement is to that document or agreement as amended or replaced;

- j) a reference to 'law' means statute law, common law and equitable principles;
- k) a reference to a particular law includes that law and any subordinate legislation (such as regulations) under it, in each case as amended, replaced, re-enacted or consolidated;
- l) a reference to an accounting term is to that term as it is used in Accounting Standards;
- m) a reference to 'dollars', '\$' or 'A\$' is to the lawful currency of Australia;
- n) a time means that time in Melbourne or Sydney;
- o) a reference to a day or a month means a calendar day or calendar month;
- p) if a period of time starts from a given day (or event), it is calculated exclusive of that day (or the day the event occurs);
- q) where a matter is expressed to be to the 'knowledge' 'information', 'belief' or 'awareness' (or similar) of a person, the person is treated as stating that this is the knowledge of the person (and their Related Bodies Corporate if any) after having made reasonable enquiry of their respective officers and employees;
- r) the masculine includes the feminine, and vice versa; and
- s) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) are not words of limitation.

### **3 Headings**

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Headings in this agreement (including references to headings in cross references to clauses) are for convenience only and do not affect its meaning.

### **4 Certain provisions may be excluded**

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If (but for this clause) a provision of this agreement would be illegal, void or unenforceable or contravene the law, this agreement is to be interpreted as if the provision was omitted.

### **5 Neutral interpretation**

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This agreement must be interpreted neutrally and not unfavourably to the party putting it forward.

## Schedule 2 - Ansett Companies under Administration

| Company  | ACN         | PWC Appointment Date | Andersen Appointment Date | DOCA Appointment Date |
|--|-------------|----------------------|---------------------------|-----------------------|
| 501 Swanston Street Pty Limited (Administrators Appointed)                                   | 005 477 618 | 14 Sept 01           | 17 Sept 01                |                       |
| Aeropelican Air Services Pty Limited (Subject to Deed of Company Arrangement)                | 000 653 083 | 12 Sept 01           | 17 Sept 01                | 15 Feb 02             |
| Airport Terminals Pty Limited (Administrators Appointed)                                     | 053 976 444 | 14 Sept 01           | 17 Sept 01                |                       |
| Aldong Services Pty Limited (Administrators Appointed)                                       | 000 258 113 | 14 Sept 01           | 17 Sept 01                |                       |
| Ansett Aircraft Finance Limited (Administrators Appointed)                                   | 008 643 276 | 14 Sept 01           | 17 Sept 01                |                       |
| Ansett Australia and Air New Zealand Engineering Services Limited (Administrators Appointed) | 089 520 696 | N/A                  | 3 Oct 01                  |                       |
| Ansett Australia Holdings Limited (Administrators Appointed)                                 | 004 216 291 | 12 Sept 01           | 17 Sept 01                |                       |
| Ansett Australia Limited (Administrators Appointed)  | 004 409 410 | 12 Sept 01           | 17 Sept 01                |                       |
| Ansett Aviation Equipment Pty Limited (Administrators Appointed)                             | 008 559 733 | 14 Sept 01           | 17 Sept 01                |                       |
| Ansett Carts Pty Limited (Administrators Appointed)  | 005 181 215 | 14 Sept 01           | 17 Sept 01                |                       |
| Ansett Equipment Finance Limited (Administrators Appointed)                                  | 006 827 989 | 14 Sept 01           | 17 Sept 01                |                       |
| Ansett Finance Limited (Administrators Appointed)  | 006 555 166 | 14 Sept 01           | 17 Sept 01                |                       |
| Ansett Holdings Limited (Administrators Appointed)   | 065 117 535 | 12 Sept 01           | 17 Sept 01                |                       |
| Ansett International Limited (Administrators Appointed)                                      | 060 622 460 | 12 Sept 01           | 17 Sept 01                |                       |
| Bodas Pty Limited (Administrators Appointed)   | 002 158 741 | 12 Sept 01           | 17 Sept 01                |                       |

|  |             |            |            |           |
|--|-------------|------------|------------|-----------|
| Brazson Pty Limited<br>(Administrators<br>Appointed)   | 055 259 008 | 14 Sept 01 | 17 Sept 01 |           |
| Eastwest Airlines<br>(Operations) Limited<br>(Administrators<br>Appointed)   | 000 259 469 | 14 Sept 01 | 17 Sept 01 |           |
| Eastwest Airlines<br>(Administrators<br>Appointed)   | 000 063 972 | 14 Sept 01 | 17 Sept 01 |           |
| Kendell Airlines (Aust)<br>Pty Limited<br>(Administrators<br>Appointed)  | 000 579 680 | 12 Sept 01 | 17 Sept 01 |           |
| Morael Pty Limited<br>(Administrators<br>Appointed)  | 003 286 440 | 14 Sept 01 | 17 Sept 01 |           |
| Northern Airlines<br>Limited (Administrators<br>Appointed)   | 009 607 069 | 14 Sept 01 | 17 Sept 01 |           |
| Northern Territory Aerial<br>Work Pty Limited<br>(Administrators<br>Appointed)   | 009 611 321 | 14 Sept 01 | 17 Sept 01 |           |
| Rock-It-Cargo (Aust) Pty<br>Limited (Administrators<br>Appointed)  | 003 004 126 | 14 Sept 01 | 17 Sept 01 |           |
| ANST Show Pty Limited<br>(Administrators<br>Appointed) (Formerly<br>Trading as Show Group<br>Pty Limited)                                | 002 968 989 | 12 Sept 01 | 17 Sept 01 |           |
| ANST Westsky Airlines<br>Pty Limited (Subject to<br>Deed of Company<br>Arrangement) (Formerly<br>Skywest Airlines Pty<br>Limited)        | 008 997 662 | 12 Sept 01 | 17 Sept 01 | 15 Feb 02 |
| ANST Westsky Aviation<br>Limited (Subject to Deed<br>of Company<br>Arrangement) (Formerly<br>Skywest Aviation<br>Limited)                | 004 444 866 | 14 Sept 01 | 17 Sept 01 | 15 Feb 02 |
| ANST Westsky Holdings<br>Pty Limited (Subject to<br>Deed of Company<br>Arrangement) (Formerly<br>Skywest Holdings Pty<br>Limited)        | 008 905 646 | 14 Sept 01 | 17 Sept 01 | 15 Feb 02 |
| ANST Westsky Jet<br>Charter Pty Limited)<br>(Subject to Deed of<br>Company Arrangement)<br>(Formerly Skywest Jet<br>Charter Pty Limited) | 008 800 155 | 14 Sept 01 | 17 Sept 01 | 15 Feb 02 |
| South Centre<br>Maintenance Pty Limited<br>(Administrators<br>Appointed)   | 007 286 660 | 12 Sept 01 | 17 Sept 01 |           |

|   |             |            |            |
|---|-------------|------------|------------|
| Spaca Pty Limited<br>(Administrators<br>Appointed)  | 006 773 593 | 14 Sept 01 | 17 Sept 01 |
| Traveland International<br>(Aust) Pty Limited<br>(Administrators<br>Appointed)  | 000 275 936 | 14 Sept 01 | 17 Sept 01 |
| ANST Traveland<br>International Pty Limited<br>(Administrators<br>Appointed) (Formerly<br>Trading as Traveland<br>International Pty<br>Limited) | 000 598 452 | 12 Sept 01 | 17 Sept 01 |
| Traveland New Staff Pty<br>Limited (Administrators<br>Appointed)  | 080 739 037 | 14 Sept 01 | 17 Sept 01 |
| Traveland Pty Limited<br>(Administrators<br>Appointed)  | 000 240 746 | 12 Sept 01 | 17 Sept 01 |
| Waigali Pty Limited<br>(Administrators<br>Appointed)  | 055 258 921 | 14 Sept 01 | 17 Sept 01 |
| Westintech Limited<br>(Administrators<br>Appointed)   | 009 084 039 | 14 Sept 01 | 17 Sept 01 |
| Westintech Nominees<br>Pty Limited<br>(Administrators<br>Appointed)   | 009 302 158 | 14 Sept 01 | 17 Sept 01 |
| Whitsunday Affairs Pty<br>Limited (Administrators<br>Appointed)   | 009 694 553 | 14 Sept 01 | 17 Sept 01 |
| Whitsunday Harbour Pty<br>Limited (Administrators<br>Appointed)   | 010 375 470 | 14 Sept 01 | 17 Sept 01 |
| Wridgways Holdings<br>Limited (Administrators<br>Appointed)   | 004 449 085 | 14 Sept 01 | 17 Sept 01 |
| Wridgways (Vic) Pty<br>Limited (Administrators<br>Appointed)  | 004 153 413 | 14 Sept 01 | 17 Sept 01 |

### Signing Section

Executed as an agreement.

Dated: 6 March 2002

Executed by Bodas Pty Limited  
(Administrators Appointed)  
ACN 002 158 174 by its Administrator in  
the presence of:

Mark Francis Xavier Mentha  
Mark Francis Xavier Mentha (signature)  
by his attorney Martin Madden

[Signature] JP  
Witness (signature)

Bradley James Fowler  
PLEASE PRINT NAME

Mark Anthony Korda  
Mark Anthony Korda (signature)  
by his attorney Martin Madden

[Signature] JP  
Witness (signature)

Bradley James Fowler  
PLEASE PRINT NAME

Executed for and on behalf of IAP Group  
Australia Pty Limited  
ACN 003 675 867 by

[Signature]  
Director (signature)

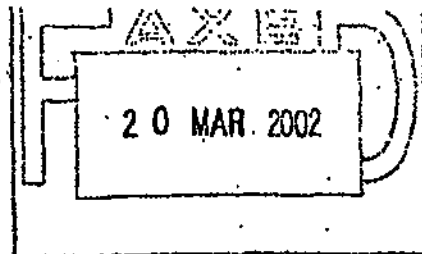
ROYSTON STEPHEN FERRIS  
PLEASE PRINT NAME

[Signature]  
Director/Secretary (signature)

GARETH BROWN  
PLEASE PRINT NAME



Fax



**ANDERSENLEGAL**

To **Peter Faludi**  
Company **Ernst & Young**  
Fax **9248 5584**  
From **Matthew A. Richards / Anthony Latimer**  
Date **20 March 2002**  
Number of pages, including this page **2**  
Our ref **ANS909/00006**

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If illegible or incomplete please call 61 2 9993 6899

Dear Peter

**Sale of Aeropelican Air Services Pty Limited (Subject to deed of company arrangement)(Aeropelican) to IAP Group Australia Pty Limited (IAP)**

We refer to your fax dated 15 March 2002.

In respect of the inaccuracies in clause references and typographical errors in the executed Share Sale Agreement, we advise as follows (using the numbering in your fax for ease of reference):

1. Agreed. Clause 5.2 - please amend the reference to clause 5.2 on line 1 to 5.3.
2. Agreed. Clause 10.4(e) - please amend the reference to "Seller" on line 2 of clause 10.4(e) to "Buyer".
3. Agreed. Clause 10.4 - please amend the reference to "price(s)" appearing on line 1 of the final paragraph of clause 10.4 to "market value".
4. Clause 11.2(b) - please replace the words "Error! reference source not found. (a)" to "11.2(a)".
5. Clause 12.1 - the reference to clause 5.2 in clause 12.1 should be to clause 5.2(d). In addition, please amend line 2 by adding the words "or a Returned Asset" after the words "Removed Assets".

We confirm your authority to amend the Share Sale Agreement on our clients' behalf as set out above. Could you please confirm our authority to do likewise in respect of your client's executed agreement.

To Peter Faludi, Ernst & Young  
Date 20 March 2002  
Page 2

We have put a copy of a fax of Aeropelican's Memorandum and Articles of Association in the post for you today.

Yours sincerely



**Matthew A. Richards**  
Manager  
61 2 9993 6899  
matthew.a.richards@au.andersenlegal.com



**Anthony Latimer**  
Partner  
61 2 9993 6747  
anthony.latimer@au.andersenlegal.com

---

To: Matthew A. Richards  
cc:  
Date: 21/03/2002 15:47  
From: Peter.Faludi@ernstyoung.com.au  
Subject: Aeropelican Air Services Pty Ltd [Virus checkedAU]

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This email is to be read subject to the disclaimer below.

I refer to your fax of yesterday's date and confirm that we have been instructed to authorise you to amend the Share Sale Agreement as specified in your facsimile.

We shall arrange for the hand amendments to be made to our version of the document.

I confirm our request that you ascertain the position relating to the lodgement of tax returns for Aeropelican Air Services Pty Ltd. We would appreciate it if you could advise us as to the date of lodgement of the last BAS Statement as well as the Company's annual tax returns. Please also advise us of any tax assessments which have been received and remain unpaid.

Under the Deed of Company Arrangement for Aeropelican, the proceeds of sale from the Transaction (including the share sale transaction) are to be held on trust in terms as set out in the Trust Deed to be entered into after completion of the Transactions. Has the Trust Deed been drafted? Are we able to review the Trust Deed?

To facilitate settlement of this matter, we have prepared a Settlement and Pre-settlement checklist. We enclose a copy of the same for your information and comment. To the extent that any additional procedures are required of you or your client as a result of our client's bank's requirements, we shall advise you of these as soon as possible.

We look forward to receiving your thoughts on the above at your earliest convenience.

Regards

Peter Faludi  
Partner  
Direct: +61 2 9248 4461

(See attached file:  
Ernst\_lib-#50678-v1-Checklist\_-\_Acquisition\_of\_Shares\_in\_Aeropelican\_Air\_Services.DOC)

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Matthew A. Richards