
Parties

TE RŪNANGA O NGĀI TAHU

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT
SECTION 9



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SECTION 9 : RIGHTS OF FIRST REFUSAL

9.1 RELEVANT CROWN LAND

The Crown agrees that the Settlement Legislation shall include:

- (a) a provision providing for Te Rūnanga to have a right of first refusal over certain land owned by the Crown and specified Crown Bodies and certain financial instruments owned by Land Corporation Limited. That provision shall be in the form of, or to the same effect as, the provision set out in Part II of *Attachment 9.1*; and
- (b) definitions to the same effect as those set out in Part I of *Attachment 9.1*.

9.2 Highbank Station

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal relating to the Highbank Station, in the form specified in *Attachment 9.2* and duly executed by Electricity Corporation of New Zealand Limited (ECNZ) and/or the subsidiary of ECNZ which owns the assets comprising the Highbank Station. Te Rūnanga shall duly execute that deed on, or not later than 5 Business Days after, the Settlement Date.

9.3 Milford Airport

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal relating to the Crown's assets at Milford Airport, in the form specified in *Attachment 9.3* and duly executed by the Crown. Te Rūnanga shall duly execute that deed on, or not later than 5 Business Days after, the Settlement Date.

9.4 Christchurch International Airport Limited

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal over the Crown's shares in Christchurch International Airport Limited, in the form specified in *Attachment 9.4* and duly executed by the persons who hold those shares on behalf of the Crown. Te Rūnanga shall duly execute that deed on, or not later than 5 Business Days after, the Settlement Date.

9.5 Dunedin Airport Limited

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal over the Crown's shares in Dunedin Airport Limited, in the form specified in *Attachment 9.5* and duly executed by the persons who hold those shares on behalf of the Crown. Te Rūnanga shall duly execute that deed on, or not later than 5 Business Days after, the Settlement Date.

9.6 INVERCARGILL AIRPORT LIMITED

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal over the Crown's shares in Invercargill Airport Limited, in the form specified in *Attachment 9.6* and duly executed by the persons who hold those shares on behalf of the Crown. Te Rūnanga shall duly execute that deed on, or not later than 5 Business Days after, the Settlement Date.

9.7 TIMBERLANDS WEST COAST LIMITED

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal over the Crown's shares in Timberlands West Coast Limited, in the form specified in *Attachment 9.7* and duly executed by the persons who hold those shares on behalf of the Crown. Te Rūnanga shall execute that deed on, or not later than 5 Business Days after, the Settlement Date.

9.8 CROWN FORESTRY ASSETS

The Crown shall, on the Settlement Date, deliver to Te Rūnanga a Deed of Grant of Right of First Refusal over certain Crown forestry assets, in the form specified in *Attachment 9.8* and duly executed by the Crown. Te Rūnanga shall execute that deed on, or not later than 5 Business Days after, the Settlement Date.

ATTACHMENT 9.1
STATUTORY RIGHT OF FIRST REFUSAL

(Clause 9.1)

PART I

**DEFINITION OF WORDS AND PHRASES IN RIGHT OF FIRST
REFUSAL PROVISIONS TO BE INSERTED IN SETTLEMENT
LEGISLATION**

The following terms will be defined in the Schedule or Part of the Bill which contains the right of first refusal or in the interpretation section of the Bill:

A reference to any terms of disposal or contract or offer to dispose being “more favourable” than any other terms of disposal, contract or offer to dispose means that the terms and conditions (including price) of the first mentioned terms, contract or offer are, taken as a package, more favourable from a purchaser’s point of view than the terms and conditions (including price) of the second mentioned terms, contract or offer, taken as a package.

“attempt to dispose of Relevant Crown Land” means:

- (a) to make an offer to dispose of Relevant Crown Land to any person; or
- (b) to encourage or invite from any person an offer to take, or an expression of interest in taking, a disposal of Relevant Crown Land; or
- (c) to make a counter-offer to, or to negotiate with, a person about an offer made by a person to take a disposal of Relevant Crown Land;

“Benchmark Terms” means:

- (a) the terms set out in a Disposal Notice or a notice given under clause 17 of this Schedule; or
- (b) the terms of the last of any written offers subsequently made by Te Rūnanga during the one month period referred to in clause 19 of this Schedule,

whichever is the more favourable:

“business day” means any day of the week other than:

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- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

"chief executive" means the chief executive of Land Information New Zealand:

"concession" means a concession granted under Part IIIB of the Conservation Act 1987 or section 49 of the National Parks Act 1980 or section 59A of the Reserves Act 1977 or section 14AA of the Wildlife Act 1953:

"Crown" has the same meaning as in section 2(1) of the Public Finance Act 1989:

"Crown body" means the Crown, a Crown entity, a State enterprise, or any company that is wholly owned by a Crown entity or a State enterprise:

"Crown entity" has the same meaning as in section 2(1) of the Public Finance Act 1989; and includes the New Zealand Railways Corporation:

"Disposal Notice" means a notice given under clause 7(1)(b) of this Schedule which makes the statement and offer referred to in paragraph (iii) of that clause:

"dispose of Relevant Crown Land" means:

- (a) to transfer the estate in fee simple of Relevant Crown Land but (for the avoidance of doubt) does not mean to vest a reserve in another person pursuant to section 26 or 26A of the Reserves Act 1977; or
- (b) to assign, transfer or surrender a lease of Relevant Crown Land the unexpired term of which, including rights of renewal or extensions contained in the lease or otherwise granted to the lessee, is, or could be, for 50 years or longer; or
- (c) to grant a lease (including a lease by way of a concession) of Relevant Crown Land the term of which, including rights of renewal or of extensions contained in the lease or otherwise granted to the lessee is, or could be, for 50 years or longer; or

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- (d) in the case of Land Corporation Limited or a company that is wholly owned by Land Corporation Limited, to assign the right to receive any instalments payable under section 65 of the Land Act 1948 in respect of any Relevant Crown Land,

and other grammatical forms of that phrase have a corresponding meaning:

“lease” includes any right which grants exclusive possession:

“Public Valuer” has the same meaning as in the Valuers Act 1948:

“Relevant Crown Land” means:

- (a) the land comprised in Certificate of Titles B3/1279, 11B/514, 11B/934 and 80/221 (all Southland Registry);
- (b) every parcel of land situated in the [Ngāi Tahu Claim Area] which on [*insert here date of the Deed*] was, and on the date on which this Schedule comes into force, still is, vested in the Crown or held by the Crown under any Act (including every parcel of land vested in another person under section 26 or 26A of the Reserves Act 1977);
- (c) every parcel of land situated in the [Ngāi Tahu Claim Area] in respect of which the registered proprietor or the person entitled to be the registered proprietor of an estate in fee simple or of a leasehold estate in respect of a lease the unexpired term of which, including rights of renewal or of extensions contained in the lease or otherwise granted to the lessee is, or could be, for 50 years or longer, was on [*insert here the date of the deed*] and, on the date on which this Schedule comes into force, still is:
- (i) a Crown Health Enterprise; or
 - (ii) a Crown Research Institute; or
 - (iii) an Institution established under Part XIV of the Education Act 1989; or
 - (iv) Land Corporation Limited or a company that is wholly owned by Land Corporation Limited; or
 - (v) New Zealand Fire Service Commission; or

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- (vi) Transit New Zealand;
- (d) any parcel of land forming consideration or part consideration for any disposal of a kind referred to in clause 6(1)(g) or (j) of this Schedule; and
- (e) any parcel of land included in the processes set out in Sections 5, 6 and 7 of the [deed of settlement] other than:
 - (i) any such parcel of land which Te Rūnanga has acquired pursuant to those processes; and
 - (ii) any such parcel of land in respect of which “OTS” is the Vendor Agency specified in the last column of Attachment 5.1 of the [deed of settlement]:

“Special Land” means any Relevant Crown Land which is classified as such pursuant to clause 9 or clause 15(1) of this Schedule:

“Special Land notice” means a notice given under clause 7(1)(b) of this Schedule, which contains the statement referred to in paragraph (iv) of that clause:

“State enterprise” has the same meaning as in section 2 of the State-Owned Enterprises Act 1986:

PART II**RIGHT OF FIRST REFUSAL PROVISIONS TO BE INSERTED IN
SETTLEMENT LEGISLATION**

The following provisions are drafted as if the Settlement Legislation will set out the right of first refusal in a Schedule. An acceptable alternative will be for the right of first refusal to comprise one Part of the Settlement Legislation.

1. **Preliminary notice** - A Crown body (or any body that was a Crown body on *[insert the date of deed]* or, if later, on the date which the body first acquired the Relevant Crown Land concerned) shall give written notice to Te Rūnanga that it is considering the disposal of Relevant Crown Land where:

- (1) the body has commenced the process of identifying whether or not it has obligations to any person described in subclause 6(1)(c) to (f) of this Schedule; or
- (2) has otherwise, by its action, demonstrated that it is considering the disposal of the Relevant Crown Land.

2. **Contents of preliminary notice** - The written notice given under clause 1 of this Schedule shall:

- (1) describe the Relevant Crown Land by reference to:
 - (a) its certificate of title or other legal description; and
 - (b) its postal address or, if it does not have a postal address, by a diagrammatic or written description containing sufficient information to enable a person who was not previously familiar with the land to physically inspect the land; and
- (2) set out the address and (if applicable) facsimile number to which all notices and other communications should be sent for the purpose of this Schedule.

3. **No obligation under section 40 Public Works Act** - For the avoidance of doubt, the fact that a body gives a notice under clause 1 of this Schedule does not of itself indicate that any obligation has arisen under:

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- (1) section 40 of the Public Works Act 1981 or that section as applied by any other enactment; or
- (2) section 23(1) or section 24(4) of the New Zealand Railways Corporation Restructuring Act 1990; or
- (3) section 207(4) of the Education Act 1989.

4. Notice by Te Rūnanga -

- (1) Te Rūnanga may give written notice to any body which gives a notice under clause 1 of this Schedule stating that it has no interest in acquiring the Relevant Crown Land concerned in accordance with this Schedule, in which case this Schedule will no longer apply to a disposal of that Relevant Crown Land.
- (2) This Schedule does not apply to any disposal or attempted disposal if Te Rūnanga has waived its rights in respect of that disposal or attempted disposal by notice in writing to the Crown body or other body.

5. Crown body shall comply with this Schedule - Subject to clauses 4 and 6 of this Schedule, a Crown body (or any body that was a Crown body on [*insert here date of deed*] or, if later, on the date which the body first acquired the Relevant Crown Land concerned), shall not dispose of or attempt to dispose of any Relevant Crown Land to any person, except in accordance with the requirements of this Schedule.

6. Exceptions -

- (1) This Schedule does not apply to any disposal or attempted disposal to:
 - (a) another Crown body; or
 - (b) Te Rūnanga o Ngāi Tahu or any other person to whom the Relevant Crown Land is being disposed of to give effect to the [Deed of Settlement]; or
 - (c) a person who is entitled to receive an offer made under:
 - (i) section 40 of the Public Works Act 1981 or that section as applied by any other enactment; or

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- (ii) section 23(1) or section 24(4) of the New Zealand Railways Corporation Restructuring Act 1990; or
- (iii) section 207(4) of the Education Act 1989; or
- (d) the existing tenant of a house situated on any Relevant Crown Land that is -
 - (i) land held on [*insert here date of deed*] for education purposes by the Crown; or
 - (ii) land held by any Crown body which, on [*insert here date of deed*], has a policy under which houses that are to be sold are first offered for purchase by the existing tenants; or
- (e) a person who had on [*insert here date of deed*] a legal right to purchase the Relevant Crown Land or (as the case may be) to be granted a lease of the land or be offered the opportunity to purchase or lease the land; or
- (f) a person who was on [*insert here date of deed*] entitled to purchase the Relevant Crown Land under the terms of any gift, endowment, or trust relating to the land, or under any enactment or rule of law; or
- (g) a person to whom the Relevant Crown Land is being disposed of under any of the following enactments:
 - (i) section 16A of the Conservation Act 1987; or
 - (ii) section 24E of the Conservation Act 1987; or
 - (iii) section 15 of the Reserves Act 1977; or
 - (iv) any future enactment referred to in section 11(1) of the National Parks Act 1980, which directs or authorises the disposal of land formerly included in any park to a person in consideration for, or part consideration for, other land which will become held or administered under the Conservation Act 1987, the Reserves Act 1977 or the National Parks Act 1980; or
- (h) the lessee under a lease of Relevant Crown Land granted under section 66 of the Land Act 1948 on or before [*insert here date of deed*], being Relevant Crown Land which was classified under section 51 of that Act

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as pastoral land but has since been reclassified under section 51(3) of that Act; or

- (i) the trustee or trustees of a community trust the object or principal object of which is to provide or arrange the provision of “services” within the meaning of the Health and Disability Services Act 1993; or
- (j) a person to whom the land is being disposed of under section 117(3) of the Public Works Act (other than a person to whom the land is being disposed of pursuant to the phrase “may be dealt with as Crown land under the Land Act 1948” in paragraph (b) of that section) or under section 119(2)(a) of the Public Works Act 1981; or
- (k) a person to whom the Relevant Crown Land is being disposed of by way of gift for charitable purposes.

(2) The trustee or trustees for the time being of a trust of the kind referred to in subclause (1)(i) of this clause shall be deemed to be a Crown body for the purposes of this Schedule in relation to any Relevant Crown Land disposed of to the trustee or trustees under subclause (1) of this clause.

(3) The Crown or other body shall give written notice to Te Rūnanga of a disposal to which subclause (1) of this clause applies specifying:

- (a) the Relevant Crown Land concerned by reference to the matters set out in subclause 2(1) of this Schedule; and
- (b) the identity of the person to whom the land is being disposed of; and
- (c) the ground or grounds on which subclause (1) of this clause applies.

(4) A notice under subclause (3) of this clause shall be given:

- (a) in the case of a disposal effected by a licensee paying off the whole of the purchase money under section 65(7) of the Land Act 1948, on the next business day after the disposal; and
- (b) in all other cases, not later than 10 business days before the disposal.

7. Notice shall be given

(1) A Crown body or other body to which this Schedule applies shall, before attempting to dispose of any Relevant Crown Land:

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- (a) give notice under clause 1 of this Schedule (if it has not already done so); and
- (b) unless:
- (i) it receives notice under clause 4 of this Schedule within 10 business days of receipt by Te Rūnanga of notice under clause 1 of this Schedule; or
 - (ii) it has received written notice from Te Rūnanga that Te Rūnanga agrees that the Relevant Crown Land is Special Land;
- give written notice to Te Rūnanga which describes the Relevant Crown Land concerned by reference to the matters set out in clause 2(1) of this Schedule and which either:
- (iii) states the price and other proposed terms and conditions of disposal and offers to dispose of the Relevant Crown Land to Te Rūnanga on those terms; or
 - (iv) includes a statement signed by a Public Valuer complying with subclause (2) of this clause.
- (2) A statement given under clause 7(1)(b)(iv) of this Schedule shall state that, in the opinion of the Public Valuer making the statement, the Relevant Crown Land is a property in respect of which, in the Public Valuer's opinion, a prudent vendor intending to obtain the market price, terms and conditions for the property would not make an offer to sell the property to another person based only on the Public Valuer's assessment of that price because:
- (a) there is insufficient comparable sales evidence; or
 - (b) the Public Valuer cannot determine the highest and best use of the property without a reasonable doubt; or
 - (c) the Public Valuer cannot determine the class of potential purchasers without a reasonable doubt,

and that the property should therefore be treated as Special Land for the purposes of this Schedule.

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(3) In relation to an attempted disposal of Relevant Crown Land an actual disposal of which would fall within item (d) of the definition of “dispose of Relevant Crown Land”, the Crown body or other body may only give a Disposal Notice and not a Special Land notice.

8. **Application of clauses 9-15** - Clauses 9 to 15 (inclusive) of this Schedule apply if the Crown body or other body gives a Special Land notice.

9. **Application of clauses 16-17** - If, within 3 business days of receipt by Te Rūnanga of the Special Land notice (time being of the essence), the Crown body or other body does not receive written notice from Te Rūnanga that Te Rūnanga disputes the statement given in the Special Land notice or if Te Rūnanga has otherwise given the body written notice that Te Rūnanga agrees that the Relevant Crown Land is Special Land, the Relevant Crown Land will be Special Land for the shorter of:

- (1) the period of 2 years commencing on the date which is the sooner of 3 business days after receipt by Te Rūnanga of the Special Land notice and the date which Te Rūnanga otherwise gives written notice that it agrees the Relevant Crown Land is Special Land; and
- (2) the period of 9 months following the expiry of 1 month from the date of receipt by Te Rūnanga of a notice given under clause 17 of this Schedule in respect of that Special Land,

and clauses 16 and 17 of this Schedule shall apply.

10. **Appointment of valuer** - If the Crown body or other body does receive the notice referred to in clause 9 of this Schedule within the period referred to in that clause, the body and Te Rūnanga shall attempt to appoint jointly a Public Valuer to determine whether or not the Relevant Crown Land concerned is Special Land.

11. **Appointment by President NZIV** - If, within 3 business days of receipt by the Crown body or other body of the notice referred to in clause 9 of this Schedule (time being of the essence), a Public Valuer has not been appointed under clause 10 of this Schedule, the body or Te Rūnanga may request the President of the New Zealand Institute of Valuers (or his or her nominee) to appoint a Public Valuer to determine whether or not the Relevant Crown Land concerned is Special Land.

12. **Appointment by President** - Upon receipt of the request, the President (or nominee) shall appoint a Public Valuer who is suitably experienced and independent as soon as practicable and immediately notify the Crown body or other body and Te Rūnanga of that appointment.

13. Determination by independent person -

- (1) A person will only be properly appointed under clause 10 or 12 of this Schedule if he or she has, in writing, accepted appointment on the basis that such appointment requires him or her to comply with the provisions of this Schedule relevant to his or her appointment.
- (2) The Public Valuer appointed under clause 10 or 12 of this Schedule shall determine whether or not the Relevant Crown Land concerned is Special Land within 5 business days of his or her appointment.
- (3) The Public Valuer shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Public Valuer, so long as this does not have the effect of, in the Public Valuer's opinion, extending the 5 business day period referred to above.
- (4) If requested by the body or Te Rūnanga at any time within 5 business days after notification of the determination, the person shall give written reasons for his or her determination and the party making the request shall pay that person's reasonable fees and costs for giving such reasons.

14. Notice of determination - Upon making a determination under clause 13 of this Schedule, the Public Valuer appointed under clause 10 or 12 of this Schedule shall immediately give notice in writing to the body and Te Rūnanga of that determination.

15. Consequences of determination - If the determination of the Public Valuer appointed under clause 10 or 12 of this Schedule is:

- (1) that the Relevant Crown Land concerned is Special Land, that land will be Special Land for the shorter of:
 - (a) the period of 2 years commencing on the date of notification to Te Rūnanga of the determination for the purposes of this Schedule; and
 - (b) the period of 9 months following the expiry of 1 month from the date of receipt by Te Rūnanga of a notice given under clause 17 of this Schedule in respect of that Special Land,

and clauses 16 and 17 of this Schedule shall apply;

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- (2) that the Relevant Crown Land concerned is not Special Land, the body may not serve a Special Land notice during whichever of the 2 periods referred to in subclause (1) of this clause applies.

16. Attempted disposal of Special Land permitted - A Crown body or other body may attempt to dispose of Special Land to any person but shall not: -

- (1) actually dispose of the Special Land to another person except in accordance with clause 24, 25, 33 or 36 of this Schedule; or
- (2) enter into an agreement to dispose of the Special Land to another person, unless that agreement is conditional upon:
- (a) the body first complying with clauses 17 and 19 of this Schedule; and
- (b) clause 24 or 33 of this Schedule applying.

17. Notice to Te Rūnanga before disposal - A Crown body or other body shall, before disposing of any Special Land, give written notice to Te Rūnanga which describes the Special Land concerned by reference to the matters set out in clause 2(1) of this Schedule and which states the price and other proposed terms and conditions of disposal and offers to dispose of the Relevant Crown Land concerned to Te Rūnanga at that price and on those terms and conditions.

18. Acceptance by Te Rūnanga - Where, within 1 month after the date on which Te Rūnanga receives a Disposal Notice or a notice under clause 17 of this Schedule from a Crown body or other body (time being of the essence), Te Rūnanga:

- (1) accepts the offer set out in the notice by giving written notice of acceptance to the body; or
- (2) otherwise agrees with the body in writing to purchase the land concerned,

a contract for the sale and purchase of that land shall be thereby constituted between the body and Te Rūnanga and that contract may be enforced accordingly.

19. Negotiation in good faith - During the period of 1 month referred to in clause 18 of this Schedule, the body and Te Rūnanga shall, through their respective representative or representatives, negotiate in good faith to attempt to conclude an agreement for sale and purchase of the Relevant Crown Land.

20. **Obligations not implied** - The obligation of the parties to negotiate in good faith referred to in clause 19 of this Schedule:

- (1) shall not be taken as implying an obligation on:
 - (a) Te Rūnanga to make any offer or accept any offer made to it in a Disposal Notice or under clause 17 of this Schedule or during the negotiations referred to in clause 19 of this Schedule; or
 - (b) the Crown body or other body:
 - (i) to make any other offer; or
 - (ii) to accept any offer made to it during the negotiations referred to in clause 19 of this Schedule or to alter its judgement that any existing agreement entered into under clause 16(2) of this Schedule is not more favourable to any such offer; or
- (2) shall not require the body or Te Rūnanga to act in a manner which is inconsistent with, respectively, its own commercial interest.

21. **Non-acceptance by Te Rūnanga** - If, within 1 month after the date on which Te Rūnanga receives a Disposal Notice or a notice under clause 17 of this Schedule from a Crown body or other body (time being of the essence), a contract for the sale and purchase of the Relevant Crown Land to which the notice relates is not constituted under clause 18 of this Schedule and the body has complied with its obligations under clause 19, the body:

- (1) may, at any time during the period of 9 months following the expiry of 1 month from the date of receipt by Te Rūnanga of the Disposal Notice or a notice under clause 17 of this Schedule, attempt to dispose of the land to any person it wishes so long as the terms of the disposal are not more favourable than the Benchmark Terms, but shall not:
 - (a) effect a disposal of the land to another person except in accordance with clauses 24, 25, 33 or 36 of this Schedule; or
 - (b) enter into an agreement to dispose of the land to another person unless that agreement is conditional upon clause 25 or 33 of this Schedule applying; and

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(2) shall not dispose of, or attempt to dispose of, the land (whether or not it is Special Land), after the expiry of that 9 month period without first complying in full with the requirements of this Schedule.

22. Notice of agreement under clause 16(2) to Te Rūnanga - A Crown body or other body which enters into an agreement under clause 16(2) of this Schedule:

- (1) may give written notice to Te Rūnanga of that fact and disclosing the terms of the agreement; and
- (2) shall give such notice before giving effect to that agreement for the purpose of clause 24.

23. Notice of agreement under clause 21(1)(b) to Te Rūnanga - Immediately after entering into an agreement under clause 21(1)(b) of this Schedule, the Crown body or other body shall give written notice to Te Rūnanga of that fact and disclosing the terms of the agreement.

24. No notice from Te Rūnanga - clause 16(2) - If, in the case of an agreement entered into under clause 16(2) of this Schedule, within the later of:

- (1) 3 business days of receipt by Te Rūnanga of the notice referred to in clause 22 of this Schedule; and
- (2) 3 business days of the expiry of the 1 month period referred to in clause 18 of this Schedule;

(time being of the essence), the Crown body or other body does not receive written notice from Te Rūnanga stating that, in Te Rūnanga's opinion, the terms of the agreement are more favourable than the Benchmark Terms, the body may dispose of the Relevant Crown Land in accordance with that agreement.

25. No notice from Te Rūnanga - clause 23 - If, within 3 business days of receipt by Te Rūnanga of the notice referred to in clause 23 of this Schedule (time being of the essence), the Crown body or other body does not receive written notice from Te Rūnanga stating that, in Te Rūnanga's opinion, the terms of the agreement are more favourable than the Benchmark Terms, the body may dispose of the Relevant Crown Land in accordance with that agreement.

26. Application of clauses 27-36 - If the Crown body or other body does receive the notice referred to in clause 24 or 25 of this Schedule within the period referred to in that clause, clauses 27 to 36 (inclusive) of this Schedule apply.

27. **Attempt to appoint independent person** - The Crown body or other body and Te Rūnanga shall attempt to appoint jointly a suitably qualified and experienced independent person to determine whether or not the terms of the agreement are more favourable than the Benchmark Terms.

28. **Failure to agree on appointment** -

- (1) If, within 2 business days of receipt by the Crown body or other body of the notice referred to in clause 24 or 25 of this Schedule (time being of the essence), the body and Te Rūnanga cannot agree on the person to be appointed under clause 27 of this Schedule then:
 - (a) if the body and Te Rūnanga agree on a third party who should be asked to make the appointment, the body shall request the agreed third party to appoint a person to determine whether or not the terms of the agreement are more favourable than the Benchmark Terms; or
 - (b) if the body and Te Rūnanga have not agreed on a third party who should be asked to make the appointment or that third party has not accepted appointment, the body shall request the President of the New Zealand Law Society (or his or her nominee) to appoint a person to determine whether or not the terms of the agreement are more favourable than the Benchmark Terms.
- (2) Any third party will only be properly appointed under subclause (1) of this clause if he or she has accepted appointment on the basis that such appointment requires him or her to comply with clause 29 of this Schedule.

29. **Appointment by person or President NZLS** - Upon receipt of the request, the person agreed under clause 28(1) of this Schedule or the President of the New Zealand Law Society or his or her nominee shall appoint a suitably qualified and experienced independent person as soon as practicable and notify the body and Te Rūnanga of that appointment.

30. **Determination by independent person** -

- (1) A person will only be properly appointed under clause 27 or 29 of this Schedule if he or she has, in writing, accepted appointment on the basis that such appointment requires him or her to comply with the provisions of this Schedule relevant to his or her appointment.

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- (2) The person appointed under clause 27 or 29 of this Schedule shall determine whether or not the terms of the agreement are more favourable than the Benchmark Terms within 5 business days of his or her appointment.
- (3) The person shall provide an opportunity to each party to make submissions on the issue or issues being considered by the person, so long as this does not have the effect, in the person's opinion, of extending the 5 business day period referred to above.
- (4) If requested by the Crown body or other body or Te Rūnanga at any time within 5 business days after notification of the determination, the person shall give written reasons of his or her determination and the party making the request shall pay that person's reasonable fees and costs for giving such reasons.

31. **Notice of determination** - Upon making a determination under clause 30 of this Schedule, the person shall immediately give notice in writing to the Crown body or other body and Te Rūnanga of that determination.

32. **Early appointment** -

- (1) The Crown body or other body or Te Rūnanga may, at any time after the date of any notice given under clause 7 of this Schedule in respect of any Relevant Crown Land, require, by notice to the other of them, the appointment of an independent person under clauses 27-29 (inclusive) of this Schedule in anticipation of a possible future reference to such a person under clause 30 of this Schedule.
- (2) If a notice is given under subclause (1) of this clause, clauses 27-29 (inclusive) of this Schedule will apply and any reference under clause 30 of this Schedule which occurs within 9 months after the appointment will be to the person so appointed unless, before the date of the reference, either party has given notice to the other withdrawing its approval of the person so appointed.

33. **Disposal permitted if terms not more favourable** - If the determination of the person appointed under clause 27 or 29 of this Schedule is that the terms of the agreement are not more favourable than the Benchmark Terms, the Crown body or other body may dispose of the Relevant Crown Land in accordance with the agreement.

34. **Application of clauses 35-36 if terms more favourable** - If the person's determination is that the terms of the agreement are more favourable than the Benchmark Terms, clauses 35 and 36 of this Schedule apply.

35. **Te Rūnanga may give notice to purchase** -

(1) If, within 5 business days of receipt by Te Rūnanga of the person's determination (time being of the essence), the Crown body or other body receives a notice from Te Rūnanga stating that it wishes to purchase the Relevant Crown Land concerned on the terms of the agreement, a contract for the sale and purchase of that land shall be thereby constituted between the body and Te Rūnanga and that contract may be enforced accordingly.

(2) The date on which the parties will be obliged to settle under the contract will be 10 business days after the date on which Te Rūnanga gives a notice under subclause (1) of this clause or such later date as may have been specified in the agreement which was determined to have been on more favourable terms.

36. **Disposal permitted if no notice received** - If the Crown body or other body does not receive a notice referred to in clause 35 of this Schedule within the period referred to in that clause, the body may dispose of the Relevant Crown Land concerned in accordance with the agreement.

37. **Re-offer required** - Where a Crown body or other body:

- (1) has offered to sell any Relevant Crown Land to Te Rūnanga in a Disposal Notice under clause 17 of this Schedule; and
- (2) wishes to again offer that land for sale, but on terms more favourable to the purchaser than the terms of the first offer,

the body may do so, so long as it first re-offers the land for sale on the more favourable terms to Te Rūnanga in a Disposal Notice or in accordance with clause 17 of this Schedule; and clauses 18 to 36 of this Schedule and this clause shall apply to any such re-offer.

38. **Termination of obligation** - The obligation of a Crown body or other body under this Schedule in respect of any particular estate in land shall terminate on a disposal of a kind referred to in subclauses (a) or (b) of the definition of "dispose of Relevant Crown Land":

- (1) to Te Rūnanga in accordance with the requirements of this Schedule; or

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- (2) in accordance with clause 4, 24, 25, 33 or 36 of this Schedule; or
- (3) to a person of a kind referred to in any of subclauses 6(1)(b) to (h) and (j) and (k) of this Schedule,

whichever first occurs.

39. **Non-derogation** - Nothing in this Schedule affects or derogates from, and the rights created by this Schedule are subject to:

- (1) the terms of any gift, endowment, or trust existing on [*insert here date of Deed*] and relating to Relevant Crown Land or any improvements on any such land; and
- (2) the rights of any holders of mortgages over, or of security interest in, Relevant Crown Land or any improvements on such land; and
- (3) any other enactment or rule of law that shall be complied with before any Relevant Crown Land is disposed of; and
- (4) any feature of the title to any Relevant Crown Land which prevents or limits a body's right to transfer the land, or any improvements on the land, to any person; and
- (4) any legal requirement which impedes a body's ability to sell or otherwise dispose of any Relevant Crown Land or any improvements on any such land and which the body cannot satisfy after taking reasonable steps to do so (for the avoidance of doubt, "reasonable steps" does not include initiating a change in the law).

40. **Non-derogation** - Subject to clauses 41 and 42 of this Schedule, nothing in this Schedule affects or derogates from the right of a Crown Body to sell or otherwise dispose of any Crown Body, or requires a Crown Body to offer to Te Rūnanga any Crown Body that is to be sold or otherwise disposed of.

41. **Definitions for clause 42** - For the purposes of clause 42 of this Schedule:

Acquired Land means the Relevant Crown Land referred to in subclause 42(1) of this Schedule;

Change of Control, in relation to a New Crown Owner, means any act or omission by a Crown body which has the result that a person other than a Crown body has Effective Control of the New Crown Owner, but does not

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include any such act, omission or arrangement to which Te Rūnanga has given its prior written approval. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any New Crown Owner;

Effective Control, in relation to the New Crown Owner means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the New Crown Owner or of any holding company of the New Crown Owner which:
 - (i) amount to more than 50 percent of the issued shares of the New Crown Owner (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the New Crown Owner; or
 - (iii) enable that person to control the composition of the board of directors of the New Crown Owner; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the New Crown Owner, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the New Crown Owner for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Holding Company has the meaning given to it in the Companies Act 1993;

New Crown Owner means a Crown body to which Relevant Crown Land has been disposed pursuant to subclause 6(1)(a) of this Schedule;

Subsidiary has the meaning given to it in the Companies Act 1993.

42. Disposal of subsidiary to which Relevant Crown Land has been transferred -

- (1) If a Crown body disposes of any Relevant Crown Land to a New Crown Owner which is a Subsidiary of the Crown body or a Subsidiary of the Crown body's Holding Company and a Change of Control occurs during the period of one year commencing on the date of disposal the following provisions of this clause shall apply.
- (2) The New Crown Owner, on becoming aware of that Change of Control, shall immediately give Te Rūnanga:
 - (a) notice of the Change of Control; and
 - (b) an irrevocable offer to dispose of the Acquired Land on such terms and conditions (including price) to be determined under subclauses (6) to (13) of this clause.
- (3) If the New Crown Owner defaults in giving a notice or offer under subclause (2) of this clause, Te Rūnanga, acting on behalf of the New Crown Owner, no later than 20 business days after the date on which Te Rūnanga became aware of the Change of Control, may prepare an offer and give a copy to the New Crown Owner which offers to sell the Acquired Land to Te Rūnanga. Such an offer prepared by Te Rūnanga shall be unconditional and shall be for all of the Acquired Land on terms and conditions (including price) to be determined under subclauses (6) to (13) of this clause.
- (4) If Te Rūnanga fails to prepare an offer and give a copy to the New Crown Owner within the time limit specified in subclause (3) of this clause it will be deemed to have given its written approval to the act, omission or arrangement referred to in the definition of Change of Control in clause 41 of this Schedule.
- (5) Once an offer has been made under subclause (2)(b) or (3) of this clause, clauses 19 and 20 of this Schedule will apply as if the period referred to in clauses 19 and 20 of this Schedule were the period of 1 month commencing on the date of receipt of the offer.
- (6) If the New Crown Owner and Te Rūnanga agree on all terms and conditions (including price) within that 1 month period then a contract for the sale and purchase of the Acquired Land shall be thereby

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constituted between the New Crown Owner and Te Rūnanga and that contract may be enforced accordingly.

- (7) If the New Crown Owner and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 1 month period then:
- (a) within a further period of 5 business days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with subclauses (10) to (13) of this clause; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the offer so determined, give notice to the New Crown Owner of its acceptance of that offer by the date which is 5 business days after notice of the determination of the arbitrator has been given to Te Rūnanga.
- (8) If Te Rūnanga gives such a notice of acceptance to the New Crown Owner, then a contract for the sale and purchase of the Acquired Land shall be thereby constituted between the New Crown Owner and Te Rūnanga and that contract may be enforced accordingly.
- (9) If:
- (a) at the end of the 5 business day period referred to in subclause (7)(a) of this clause, the New Crown Owner and Te Rūnanga have not agreed on all terms and conditions (including price) and Te Rūnanga has not referred that matter to arbitration under subclause (7)(a) of this clause; or
 - (b) at the end of the 5 business day period referred to in subclause (7)(b) of this clause, Te Rūnanga has not notified acceptance under that subclause,

Te Rūnanga will be deemed to have given its written approval to the act, omission or arrangement referred to in the definition of Change of Control in clause 41 of this Schedule but the requirements of this Schedule will apply to any disposal or attempted disposal of the Acquired Land by the New Crown Owner.

- (10) If the parties cannot agree on all terms and conditions (including price) for the offer given under subclause (2) or (3) of this clause and the matters which are not agreed are referred to arbitration under subclause

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- (7)(a) of this clause, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the New Crown Owner.
- (11) The arbitration shall be conducted by one arbitrator, if the New Crown Owner and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the New Crown Owner and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.
- (12) The terms of appointment of the arbitrator shall include requirements that:
- (a) the determination shall be in the form of a written contract for sale and purchase of the Acquired Land incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and also such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other; and
 - (b) the determination is made within 20 business days after the appointment of the arbitrator or arbitrators; and
 - (c) the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and
 - (d) the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.
- (13) Te Rūnanga and the Crown Shareholder agree to be bound by the award in the arbitration. Nothing in this subclause affects the rights of Te Rūnanga under subclause (7)(b) of this clause.
43. **Schedule ceasing to apply** - Where any estate in Relevant Crown Land:
- (1) is transferred to Te Rūnanga, under clause 18 or 35 of this Schedule, (or becomes subject to an agreement for the sale and purchase of that land and such transfer fails to occur by reason of a default by Te Rūnanga); or

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- (2) is transferred (without breaching this Schedule) to any person that is not a Crown Body,

this Schedule shall cease to apply to that estate in Relevant Crown Land.

44. **Public Valuer to be expert** - A Public Valuer appointed under clauses 10 or 12 or a person appointed under clauses 27 or 29 of this Schedule, shall be regarded as acting as an expert and neither anything in this Schedule nor his or her appointment shall be regarded as a submission to arbitration or an arbitration agreement and a Public Valuer or other person so appointed shall not be regarded as an arbitrator and his or her determination shall be final and binding on Te Rūnanga and the Crown body or other body.

45. **Submissions to expert** - The Crown body or other body and Te Rūnanga may make written submissions to the Public Valuer or other person at any time prior to the Public Valuer's or other person's determination.

46. **Costs of expert under clause 13** - The cost of the Public Valuer's determination under clause 13 of this Schedule shall be borne equally by the Crown body or other body and Te Rūnanga unless the Public Valuer determines otherwise because of the conduct of the parties.

47. **Costs of expert under clause 30** - The cost of the person's determination under clause 30 of this Schedule shall be borne:

- (1) by the Crown body or other body if that determination is that the terms of the agreement with the other person are more favourable than the Benchmark Terms; or
- (2) by Te Rūnanga if that determination is that the terms of the agreement with the other person are more favourable than the Benchmark Terms.

48. **Notices** - The following provisions of this clause apply to the giving and receipt of notices and other communications under this Schedule:

- (1) any notice or other communication to be given by Te Rūnanga shall be given in writing addressed to the recipient at the address or facsimile number notified by the recipient under clause 1 of this Schedule or any other address or facsimile number subsequently notified in writing to Te Rūnanga; and
- (2) any notice or other communication to be given to Te Rūnanga shall be given in writing addressed to Te Rūnanga at Te Rūnanga's head office

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under Te Rūnanga o Ngāi Tahu Act or facsimile number at that address or any other address or facsimile number subsequently notified in writing to the party giving the notice; and

- (3) a notice or other communication may be given by hand, by post with postage prepaid, or by facsimile; and
- (4) a notice or other communication given by hand will be deemed to have been received at the time it was given unless it was not given on a business day or was given after 5.00 pm on a business day, in which case the notice or other communication will be deemed to have been given on the next business day; and
- (5) a notice or other communication given by prepaid post will be deemed to have been received on the second business day after posting; and
- (6) a notice or other communication given by facsimile will be deemed to have been received on the day of transmission unless it was not transmitted on a business day or was transmitted after 5.00 pm on a business day, in which case the notice or other communication will be deemed to have been received on the next business day after transmission.

49. **No further inquiries** - Notwithstanding any other enactment or rule of law, no court or tribunal shall have jurisdiction to inquire into, or to make any finding or recommendation in respect of:

- (1) a determination made under clauses 13, 30, 46 or 47 of this Schedule; or
- (2) any appointment under clause 12 or 29 of this Schedule.

50. **Withdrawal by Crown body** - Except as provided in clause 42 of this Schedule, nothing in this Schedule shall prevent a Crown body or other body from withdrawing a notice given under clause 1 or clause 7 of this Schedule. However, if it does so, it shall comply in full with this Schedule if it decides to attempt to dispose of the Relevant Crown Land again.

51. **Participation in sales process for Relevant Crown Land -**

- (1) Nothing in this Schedule prevents any Ngāi Tahu Participant participating in any sales process relating to any Relevant Crown Land independently of the right of first refusal set out in this Schedule.

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- (2) Te Rūnanga shall give notice to the Crown body if any Ngāi Tahu Participant intends to participate in any such sales process.
- (3) If a Ngāi Tahu Participant participates in such a sales process then the Crown body may enter into a contract to dispose of Relevant Crown Land and give effect to that contract to the Ngāi Tahu Participant without further compliance with this Schedule, but if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Schedule will apply to any future disposal or attempted disposal by the Crown body of the land.
- (4) If the Crown body wishes to dispose of the Relevant Crown Land after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales process will not prejudice or affect the Crown body's obligations under this Schedule except as provided in subclause (3) of this clause.
- (5) For the purposes of this clause, "Ngāi Tahu Participant" means Te Rūnanga, or any party associated with Te Rūnanga and any consortium in which Te Rūnanga or any such associated party is a participant and in respect of which Te Rūnanga has given notice under subclause (2) of this clause.

52. Disposal of more than one parcel of land -

- (1) Nothing in this Schedule prevents a Crown body or other body from attempting to dispose of, or from disposing of, more than one parcel of Relevant Crown Land together, or of one or more parcels of Relevant Crown Land together with other land, but this Schedule shall apply to any such attempted disposal or disposal.
- (2) For the purposes of this Schedule the terms of any offer to another person to dispose of land which:
 - (a) comprises one or more but not all of the parcels of land which were the subject of a Disposal Notice or a notice under clause 17 of this Schedule; and
 - (b) was not itself the subject of a separate notice under either of those clauses,

shall be deemed to be more favourable than the Benchmark Offer arising out of the Disposal Notice or the notice given under clause 17 of this Schedule.

53. Noting on certificates of title -

- (1) As soon as reasonably practicable after the date on which this Act comes into force and the date on which any land subsequently becomes Relevant Crown Land, the chief executive shall issue to the District Land Registrar one or more certificates that identify all the certificates of title and registered leases for the Relevant Crown Land for which certificates of title have been issued or leases registered at that date.
- (2) As soon as reasonably practicable after the date on which a certificate of title is issued or lease is registered for any Relevant Crown Land, being a date after the date on which this Act comes into force, the chief executive shall issue to the District Land Registrar a certificate that identifies the certificate of title or registered lease concerned.
- (3) As soon as reasonably practicable after receiving a certificate from the chief executive under either clause 1 or clause 2 of this clause, the District Land Registrar shall, without fee to Te Rūnanga or the registered proprietor, note on the register copy of the certificate or certificates of title to the land or on the register copy of the registered lease to which the certificate from the chief executive relates, the words "Subject to the [] Schedule to the Ngāi Tahu Claims Settlement Act 1997 (which provides for certain disposals relating to the land to which this certificate of title relates to be offered for purchase or lease to Te Rūnanga o Ngāi Tahu in certain circumstances)". In any such case, it shall not be necessary for the Registrar to record the like entry on the duplicate of the certificate of title or registered lease.

54. Removal of notation -

- (1) Where any Relevant Crown land for which a certificate of title has been issued or a lease registered is to be transferred (without breaching this Schedule) to any person other than a Crown body:
 - (a) the transferor shall notify the chief executive of the transfer; and
 - (b) the chief executive shall, before registration of the transfer, issue to the District Land Registrar a certificate stating that the land is

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to be so transferred and identifying the certificate of title or registered lease concerned.

- (2) On receipt of a certificate under subclause (1) of this clause and before registration of the transfer, the District Land Registrar shall, without fee to Te Rūnanga or the registered proprietor, delete by endorsement the words previously noted on the certificate of title or registered lease for the land in accordance with clause 53(3) of this Schedule.

55. **Copy of certificate to be sent to Te Rūnanga** - Whenever the chief executive issues a certificate to the District Land Registrar under clause 54(1)(b) of this Schedule, the chief executive shall send a copy of the certificate to Te Rūnanga.

ATTACHMENT 9.2
DEED OF GRANT OF RIGHT OF FIRST REFUSAL -
Highbank Station

(Clause 9.2)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED**
[AND/OR THE SUBSIDIARY WHICH HOLDS THE Highbank
ASSETS] (*the Owner*)

BACKGROUND

- A Te Rūnanga o Ngāi Tahu and the Crown are parties to a Deed of Settlement dated [] 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed with Te Rūnanga that the Owner would enter into a deed granting to Te Rūnanga a right of first refusal over the Highbank Assets.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Acceptance Date means the date specified in a Disposal Offer, by which the Grantee shall accept the Disposal Offer;

Actual Indication Date means the date on which the Grantee gives or is deemed to have given a notice under *clause 5.2.2*;

Assessor means an independent third party appointed for the purposes of *clause 12*;

Benchmark Offer means

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- (a) the Disposal Offer; or
- (b) any written offer subsequently made by the Grantee to acquire the Highbank Assets in the period referred to in *clause 7.1* (or, where the Grantee has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to a New Owner, means any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the New Owner, but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any New Owner;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose means sell, transfer or grant a lease the term of which, including rights of renewal or of extensions is, or could be, for 25 years or longer or otherwise dispose, and *Disposal* has a corresponding meaning;

Disposal Notice means a notice of the Owner's intention to Dispose of the Highbank Assets given under *clause 4*;

Disposal Offer means an offer to sell the Highbank Assets to the Grantee complying with *clause 5.1*;

Due Diligence Process means a process pursuant to which the Owner facilitates access to, and inspection of, information about the Highbank Assets and documentation relating to its activities connected with the Highbank Assets by prospective purchasers of the Highbank Assets;

EAL means Electricity Ashburton Limited;

Effective Control, in relation to the New Owner means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the New Owner or of any holding company of the New Owner which:
 - (i) amount to more than 50 percent of the issued shares of the New Owner (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the New Owner;
 - (iii) enable that person to control the composition of the board of directors of the New Owner; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the New Owner, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the New Owner for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Encumbrance includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Highbank Assets;

Grantee has the meaning given to it in *clause 2.5*;

Grantee Participant means the Grantee or any party associated with the Grantee or any consortium in which the Grantee or any party associated with the Grantee is a participant;

Highbank Assets means the land, buildings, structures, and associated rights, the consents, electricity generating plant and equipment and other property rights comprising the Highbank station including the Water Supply Agreement between Rangitata Diversion Race Management Limited and Electricity Corporation of New Zealand Limited dated 30 April 1992, and, where the context requires, means those of the Highbank Assets which are subject to the Disposal Offer. For the

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avoidance of doubt, a reference to “any of” the Highbank Assets applies only to any portion of the Highbank Assets without which it would not be possible to operate the Highbank station;

Holding Company has the meaning given to it in the Companies Act 1993;

Indication Date means the date specified in the Disposal Notice by which the Grantee is required to respond to the Disposal Notice under *clause 5.2*;

Joint Venture Entity means the joint venture between Te Rūnanga and EAL formed by an agreement dated 29 May 1996;

More Favourable Terms has the meaning given to it in *clause 1.2*;

MOU means the Memorandum of Understanding between the Crown and the Owner dated 8 June 1995 and published in the *New Zealand Gazette* on 23 February 1996;

New Owner means a Crown Body which is a Subsidiary of the Owner or a Subsidiary of the Owner’s Holding Company to which the Owner has Disposed of the Highbank Assets pursuant to *clause 2.2.1*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

Permitted Change of Control means Change of Control of an Owner or of any holding company of an Owner where the Grantee has given its prior written approval to the Change of Control;

Preliminary Disposal Notice means a notice of the Owner’s intention to Dispose of the Highbank Assets, given under *clause 3*;

Preliminary Information Package means:

- (a) in a case where the Owner intends to attempt to Dispose of the Highbank Assets pursuant to *clause 4.2*, information which the Owner intends to provide to other prospective bidders for the Highbank Assets; or
- (b) in a case where the Owner does not intend to attempt to Dispose of the Highbank Assets pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (c)*, subject to *clause 4.3.3*;

Settlement Date means the date which is 20 Business Days after:

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- (a) in the case where the Grantee accepts a Disposal Offer or otherwise agrees to purchase the Highbank Assets under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Highbank Assets;
- (b) in a case where *clause 13.2* applies, the date on which the Grantee gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:
 - (i) the date on which the Grantee and the Owner agree on a price for the Highbank Assets under *clause 15.5.1*; and
 - (ii) the date on which the price of the Highbank Assets is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Owner and the Grantee agree;

Subsidiary has the meaning given to it in the Companies Act 1993.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the “first-mentioned offer”) being on More Favourable Terms than any other Disposal terms, contract or offer (the “second-mentioned offer”) means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser’s point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

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- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party's successors, heirs, executors and assigns;
- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;
- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between the Grantee and the Owner.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Owner shall not Dispose of any or all of the Highbank Assets until the requirements in this Deed have been complied with.

2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Owner of the Highbank Assets to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Highbank Assets are Disposed takes the Highbank Assets subject to the terms of this Deed and first enters into a deed of covenant at the Owner's expense in favour of the Grantee to that effect; or
- 2.2.2 any person, if the person to whom the Highbank Assets are to be Disposed or the agreement effecting the Disposal is first approved in writing by the Grantee or if the Grantee has waived its rights under this Deed by notice to the Owner.

2.3 Memorandum of Understanding

The Grantee acknowledges that, pursuant to the MOU, the Owner is required to transfer certain assets, including the Highbank Assets, to Contact Energy Limited in certain circumstances. If such circumstances arise, the Owner will make such transfer subject to *clause 2.2.1* and, if the Owner is in the process of Disposing of

the Highbank Assets, will use reasonable endeavours to persuade Contact Energy Limited to continue such process after the transfer to Contact Energy Limited. However, nothing in this *clause 2.3* limits *clause 14*.

2.4 Rangitata Diversion Race Management Limited

- 2.4.1 The Owner holds certain shares in Rangitata Diversion Race Management Limited which are subject to pre-emption rights in favour of other shareholders.
- 2.4.2 The Owner agrees to use reasonable endeavours to persuade the holders of the pre-emption rights referred to in *clause 2.4.1* to allow the transfer of the shares referred to in *clause 2.4.1* to the Grantee if the Grantee acquires the Highbank Assets or to allow the Grantee to otherwise obtain the benefits associated with owning those shares.
- 2.4.3 Nothing in this Deed indicates that the Owner currently desires or proposes to transfer the shares referred to in *clause 2.4.1*. The requirements of this Deed are intended to apply only when *clause 3.1* applies.

2.5 Grantee

Te Rūnanga acknowledges that it is the intention of the Crown that this Deed will provide an opportunity to the Joint Venture Entity to purchase the Highbank Assets. Accordingly, Te Rūnanga and the Owner agree that:

- 2.5.1 it is a condition of this Deed that the right of first refusal granted by this Deed in respect of the first Disposal Notice given after the date of this Deed will be exercisable only by the Joint Venture Entity unless EAL gives notice to the Owner that it consents to the right of first refusal being exercised by another entity nominated by Te Rūnanga or waives the requirements of this *clause 2.5.1*. For the purposes of this Deed, the Grantee will, in such circumstances, be the Joint Venture Entity or the entity to which EAL has consented (unless EAL has waived the requirements of this *clause 2.5.1*), and the Grantee shall be required to execute and deliver to the Owner a deed in favour of the Owner pursuant to which it agrees to be bound by the terms of this Deed and specifies an address for notices to be given under this Deed. If EAL has waived the requirements of this *clause 2.5.1*, Te Rūnanga will be the Grantee for the purposes of this Deed; and
- 2.5.2 in the event that the Highbank Assets are not sold following the giving of the first Disposal Notice after the date of this Deed, the condition referred to in *clause 2.5.1* will not apply in respect of any future Disposal Notice, and such Disposal Notice shall be given to Te Rūnanga and Te Rūnanga will be the Grantee for the purposes of this Deed.

3 PRELIMINARY DISPOSAL NOTICE

3.1 Owner shall give Preliminary Disposal Notice

If the Owner decides to attempt to Dispose of any or all of the Highbank Assets or otherwise takes any action that indicates that it has formed an intention to Dispose of all or any of the Highbank Assets, then, unless *clause 2.2* applies or this Deed otherwise permits the Owner to Dispose of the Highbank Assets without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to Te Rūnanga on behalf of the Grantee.

3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;
- 3.2.2 set out the Owner's intention to Dispose of the Highbank Assets; and
- 3.2.3 be accompanied by, or include, an offer to provide to the Grantee the Preliminary Information Package, upon receipt by the Owner of such confidentiality undertaking from the Grantee as may reasonably be required by the Owner to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to the Grantee by the Owner in the course of the Owner's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
 - (a) preclude disclosure by the Grantee of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as the Grantee's confidentiality undertaking, unless such prospective purchaser is a party which the Owner wishes to exclude from any sales process relating to the Highbank Assets and the Owner has given notice to that effect to the Grantee and prohibits disclosure to that party by other prospective purchasers; and
 - (b) impose more onerous obligations on the Grantee than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Highbank Assets;
- 3.2.4 in the event that *clause 2.5.1* applies and EAL has not waived the requirements of that clause, include a requirement that Te Rūnanga give notice to the Owner within 5 Business Days confirming whether the Grantee will be the Joint Venture Entity or any other entity to which EAL has given its consent, such notice to be accompanied by the deed referred

to in *clause 2.5.1* duly executed by the Grantee. If such a notice is required but is not given, the Grantee shall be deemed to be the Joint Venture Entity and the Owner shall not be bound by the terms of this Deed unless and until it receives the deed referred to in *clause 2.5.1* duly executed by the Grantee.

3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by the Grantee, and, where *clause 2.5.1* applies, the deed referred to in that clause duly executed by the Grantee, the Owner shall provide the Preliminary Information Package to the Grantee.

4 DISPOSAL NOTICE

4.1 Owner shall give Disposal Notice

4.1.1 If the Owner decides to Dispose of any or all of the Highbank Assets and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Owner to Dispose of the Highbank Assets without compliance with this clause, the Owner shall give a Disposal Notice to the Grantee. The Disposal Notice shall:

- (a) be in writing;
- (b) have a Disposal Offer attached to it; and
- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Owner decides to Dispose of any or all of the Highbank Assets and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1*, comply with *clause 3*, and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to the Grantee a copy of any information which it has provided to any other prospective purchaser of the Highbank Assets and which is not included in the Preliminary Information Package.

4.2 Owner may market Highbank Assets

4.2.1 Nothing in *clause 4.1* prevents the Owner from attempting to Dispose of all or any of the Highbank Assets to any person but the Owner shall not:

- (a) effect a Disposal of all or any of the Highbank Assets to a person other than the Grantee except in accordance with the requirements of this Deed; or

- (b) enter into a contract to Dispose of all or any of the Highbank Assets to a person other than the Grantee, unless such contract is conditional upon the Owner first complying with this Deed and becoming entitled to Dispose of all or any of the Highbank Assets to that person under the terms of this Deed,

but this *clause 4.2.1* shall not apply in relation to the first Disposal Notice given under *clause 4.1*, it being the intention of the parties that the Owner will give a Disposal Notice to the Grantee in that case before the Owner attempts to Dispose of all or any of the Highbank Assets to any other person.

4.2.2 In *clause 4.2.1*, attempting to Dispose of all or any of the Highbank Assets means any of:

- (a) making an offer to Dispose of all or any of the Highbank Assets to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, all or any of the Highbank Assets; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to all or any of the Highbank Assets.

4.3 Information Package

4.3.1 If the Owner has attempted to dispose of all or any of the Highbank Assets pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to the Grantee on or before the date of the Disposal Notice the same package of information that was provided to other prospective purchasers of all or any of the Highbank Assets.

4.3.2 Subject to *clause 4.3.3*, if the Owner has not attempted to dispose of all or any of the Highbank Assets pursuant to *clause 4.2*, it shall provide to the Grantee with the Disposal Notice such information which is available to it and which it is entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:

- (a) the financial statements of the Owner in respect of the operation of the Highbank Assets (if any) and other material financial and operating data relating to the operation of the Highbank Assets for its three most recent financial reporting periods;

- (b) a description of the Highbank Assets, including summaries of, or copies of, contracts to which the Owner is a party which are included in the Highbank Assets and a description of the major physical assets included in the Highbank Assets and any material technical data, designs, plans or engineering or other material information about the physical assets included in Highbank Assets which are available or which can reasonably be procured; and
- (c) a description of the Owner's business relating to the operation of the Highbank Assets.

4.3.3 Nothing in *clause 4.3.2* requires the Owner to disclose to the Grantee any confidential information which the Owner is not entitled to disclose to the Grantee or which is not in the Owner's possession. However, the Owner shall use reasonable endeavours to persuade the person holding such information to provide (or to permit the Owner to provide) to the Grantee the information referred to in *clause 4.3.2* in a timely manner.

4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Owner shall:

- (a) if *clause 4.3.1* applies, provide to the Grantee any information which it provides to the other prospective purchasers of the Highbank Assets at or about the same time as it provides it to such other prospective purchasers. Nothing in this clause requires the disclosure to the Grantee of information provided to a prospective purchaser in the course of due diligence in response to a request from that person unless the information is provided to prospective purchasers generally; or
- (b) if *clause 4.3.2* applies, provide to the Grantee such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to the Grantee current and up to date.

4.4 Access to Information

The Owner may, instead of providing information to the Grantee, provide for the Grantee to have reasonable access to that information. Where the Owner provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided. Nothing in this *clause 4.4* affects the Owner's obligations under *clause 6*.

5 DISPOSAL OFFER

5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Owner to the Grantee to Dispose of the Highbank Assets to the Grantee, which shall be capable of acceptance by the Grantee upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 40 Business Days after the date on which the Disposal Notice was given.

5.2 The Grantee's Response

The Grantee may, by the Indication Date, either:

- 5.2.1 give notice to the Owner that it does not wish to purchase the Highbank Assets, in which case the Disposal Offer will lapse at the time at which the Grantee gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Owner that it may wish to purchase the Highbank Assets, in which case the Owner shall not Dispose of the Highbank Assets to any person other than the Grantee unless and until it has complied with the requirements of this Deed.

5.3 No Response

If the Grantee gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.2* at 5.00 pm on the Indication Date.

6 DUE DILIGENCE PROCESS

6.1 Arrangements for Due Diligence

If the Grantee has given, or is deemed to have given, a notice under *clause 5.2.2*, the Owner shall forthwith make arrangements to permit the Grantee to undertake a Due Diligence Process relating to the Highbank Assets during the period between the Actual Indication Date and the Acceptance Date.

6.2 Process for Due Diligence

Subject to *clause 6.3*:

6.2.1 if the Owner has attempted to Dispose of the Highbank Assets pursuant to *clause 4.2*, the Due Diligence Process in which the Grantee will be permitted to participate will be no more restrictive and no less comprehensive than the process previously permitted for any other prospective purchasers of the Highbank Assets; or

6.2.2 if the Owner has not attempted to Dispose of the Highbank Assets under *clause 4.2*, the Due Diligence Process in which the Grantee will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Owner intends to permit for other potential purchasers of the Highbank Assets, and will in any event provide for the Grantee to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Highbank Assets for the purposes of formulating an offer to purchase the Highbank Assets.

6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Owner to disclose to the Grantee information which it is not legally entitled to disclose or which is not in the Owner's possession, but the Owner shall use reasonable endeavours to persuade the person holding such information to provide (or permit the Owner to provide) in a timely manner to the Grantee any information which is in such person's possession that is reasonably required by the Grantee for the purposes of formulating an offer to purchase the Highbank Assets.

7 NEGOTIATION

7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Owner and the Grantee shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Highbank Assets to the Grantee.

7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

7.2.1 shall not be taken as implying an obligation on:

- (a) the Grantee to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or
- (b) the Owner to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Owner, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Owner from any other person; and

7.2.2 shall not require the Owner or Te Rūnanga to act in a manner which is, respectively, inconsistent with its own commercial interest.

7.3 No obligation to make offer

Nothing in this Deed imposes an obligation on the Grantee to make a counter-offer to the Owner in response to a Disposal Offer.

8 ACCEPTANCE OF DISPOSAL OFFER

8.1 If the Grantee accepts the Disposal Offer or otherwise agrees to purchase the Highbank Assets on terms and conditions (including price) agreed with the Owner before or at 5.00 pm on the Acceptance Date, then the sale of the Highbank Assets shall be completed on the Settlement Date.

8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Owner. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

9 NON-ACCEPTANCE OF OFFER

If:

9.1 the Grantee does not accept the Disposal Offer or otherwise agree to purchase the Highbank Assets on terms and conditions (including price) agreed with the Owner before or at 5.00 pm on the Acceptance Date; or

9.2 the Grantee gives notice to the Owner that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which the Grantee gave notice declining the Disposal Offer; and
- (b) 5.00 pm on the Acceptance Date.

10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1* or *clause 9*, then:

10.1 the Owner will be free to Dispose of the Highbank Assets to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of the Highbank Assets is executed within 12 months after the date on which the Disposal Offer has lapsed; but

10.2 the Owner may not Dispose of the Highbank Assets:

10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or

10.2.2 after the expiry of that 12 month period,

without again complying with this Deed in full.

11 NOTICE OF TERMS

11.1 Notice of Disposal to third party

If the Owner wishes to Dispose of all or any of the Highbank Assets pursuant to *clause 10.1*, it shall give notice to the Grantee of its intention to do so. Such notice shall:

11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Owner's compliance with this Deed;

11.1.2 subject to *clause 11.2* and *clause 11.3*, set out the terms and conditions (including price);

11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and

11.1.4 be given to the Grantee not less than 20 Business Days before the later of:

- (a) the proposed date of execution of the contract relating to the proposed Disposal; and
- (b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Owner's compliance with this Deed.

11.2 Non-disclosure of terms

- 11.2.1 The Owner may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to the Grantee's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 11.2.2 If the Owner exercises its rights under *clause 11.2.1* it shall give notice to that effect to the Grantee at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 The Grantee may by notice in writing to the Owner, which shall be given not more than 3 Business Days after the Owner has given the notice referred to in *clause 11.2.2*, require that the Owner refers to an Assessor the issue as to whether the terms and conditions omitted by the Owner are material.
- 11.2.4 If the Grantee gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Owner are material, the Owner shall disclose those terms and conditions to the Grantee forthwith, and the fees and costs of the Assessor shall be borne by the Owner. Otherwise, the fees and costs of the Assessor shall be borne by the Grantee.

11.3 Non-Disclosure to EAL

If the Grantee is the Joint Venture Entity or any entity including EAL, and terms and conditions of a contract or proposed contract include terms which, in the reasonable opinion of the Owner, make disclosure of them to EAL commercially sensitive, the Owner may disclose them only to Te Rūnanga, subject to an obligation that Te Rūnanga does not disclose them to EAL. However, if a reference to the Assessor is made under *clause 12.1.1* and the Assessor makes a determination under *clause 12.3.2*, then such terms and conditions may be disclosed by Te Rūnanga to EAL. Nothing in this *clause 11.3* prevents

Te Rūnanga disclosing such terms and conditions to the Grantee's advisers, so long as such advisers enter into an undertaking in favour of the Owner that they will not disclose such terms and conditions to EAL.

12 REFERENCE TO ASSESSOR

12.1 Appointment of Assessor

- 12.1.1 If requested by the Grantee within 5 Business Days after the notice referred to in *clause 11.1* has been given to the Grantee, the Owner shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.
- 12.1.2 Subject to *clause 12.6*, the Grantee's request under *clause 12.1.1* shall be made by giving notice to the Owner of the request, and such notice shall include the name of the person whom the Grantee proposes should be the Assessor.
- 12.1.3 If the Owner accepts that the person whom the Grantee proposes should be the Assessor or the Owner and the Grantee agree on an alternative, the Owner shall forthwith appoint the person nominated by the Grantee or the agreed alternative, as the case may be, as Assessor.
- 12.1.4 If the Owner does not wish that the person nominated by the Grantee be appointed as Assessor, and the Grantee and the Owner cannot agree on an alternative within 3 Business Days after the Grantee's notice has been given to the Owner, then:
- (a) if the Owner and the Grantee agree on a third party who should be asked to appoint the Assessor, the Owner shall arrange for the appointment of the Assessor by that third party; or
 - (b) if the Owner and the Grantee have not agreed on a third party who should be asked to appoint the Assessor, the Owner shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

12.2 Appointment and Conduct of Assessor

- 12.2.1 The terms of appointment of the Assessor shall include requirements that:
- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
 - (b) the Assessor shall immediately notify the parties of his or her determination; and

- (c) the Assessor shall keep all confidential information provided to him or her by the Owner or Te Rūnanga confidential.

12.2.2 The Owner shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.

12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in the Assessor's opinion, have the effect of extending the 5 Business Day period referred to above.

12.3 Assessor's Determination

If:

12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later of:

- (a) the end of the 12 month period after the date on which the last Disposal Offer made by the Owner lapsed; and
- (b) the date which is 20 Business Days after the date of the Assessor's determination;

12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by the Grantee if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Owner if the Assessor makes a determination under *clause 12.3.2*.

12.5 Binding Decision

Both the Owner and the Grantee agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

12.6 Appointment of Assessor

The Owner or the Grantee may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the

provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1* which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

- 12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or
- 12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

13 DISPOSAL OF Highbank ASSETS TO PARTY OTHER THAN THE GRANTEE

13.1 Disposal to third party

If:

- 13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to the Grantee, the Grantee has not made a request under *clause 12.1*; or
- 13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Owner may Dispose of the Highbank Assets on the terms referred to in the notice given under *clause 11.1*.

13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, the Grantee may, at any time within 5 Business Days after the Assessor has given notice to the Grantee of such determination, give a notice to the Owner stating that it wishes to acquire the Highbank Assets on the terms (including price) referred to in the notice given under *clause 11.1*. If the Grantee gives such a notice, then the Owner shall be deemed to have entered into a contract with the Grantee on the terms referred to in the notice given under *clause 11.1*. Te Rūnanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Highbank Assets on such terms.

13.3 Disposal of Highbank Assets if the Grantee does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but the Grantee does not give a notice under *clause 13.2*, then the Owner may Dispose of the Highbank Assets on the terms referred to in the notice given under *clause 11.1*.

14 WITHDRAWAL BY OWNER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Owner from withdrawing a Preliminary Disposal Notice or a Disposal Notice at any time before acceptance by the Grantee of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to dispose of all or any of the Highbank Assets again.

15 CHANGE OF CONTROL OF NEW OWNER**15.1 Notice requirement where there is Change of Control**

If:

15.1.1 a Disposal of all or any of the Highbank Assets to a New Owner occurs pursuant to *clause 2.2.1*; and

15.1.2 a Change of Control of the New Owner occurs during the period of one year commencing on the date of the Disposal,

then, on becoming aware of that Change of Control, the New Owner shall immediately give to Te Rūnanga on behalf of the Grantee:

- (a) notice of the Change of Control;
- (b) an irrevocable Disposal Offer for all of its Highbank Assets on such terms and conditions (including price) to be determined under *clause 15.5*; and
- (c) an offer to provide such information as would be included in a Preliminary Information Package if the New Owner were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

15.2 Consequence of failure to give Disposal Notice

- 15.2.1 If the New Owner defaults in giving a notice of the Change of Control or a Disposal Offer under *clause 15.1* the Grantee, acting on behalf of the New Owner, no later than 20 Business Days after the date on which the Grantee became aware of the Change of Control, may prepare a Disposal Offer and give a copy to the New Owner, which offers to sell the New Owner's Highbank Assets to the Grantee. Such a Disposal Offer prepared by the Grantee shall be unconditional and shall be for all of the Highbank Assets held by the New Owner on terms and

conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1(c)*.

15.3 Deemed Approval

If the Grantee fails to prepare a Disposal Offer and give a copy to the New Owner within the time limit specified in *clause 15.2* it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

15.4 Provision of Information and Negotiation

Once the Grantee has provided the confidentiality undertaking referred to in *clause 15.1(c)*, *clauses 3.3, 4.3.2, 4.3.4(b), 4.4, 6 and 7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1(c)* and the period referred to in *clauses 6 and 7* were the period between the date of receipt of the confidentiality undertaking referred to in *clause 15.1(c)* and the date on which the New Owner and the Grantee agree on the terms and conditions (including price) under *clause 15.5.1* or the Grantee refers the matter to arbitration under *clause 15.5.2(a)*.

15.5 Transfer of Highbank Assets

- 15.5.1 If the New Owner and the Grantee agree on all terms and conditions (including price) within 40 Business Days of the date on which the Grantee received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the New Owner under *clause 15.2*, then the New Owner shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Highbank Assets to the Grantee on such terms and conditions on the Settlement Date.
- 15.5.2 If the New Owner and the Grantee cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:
- (a) within a further period of 5 Business Days, the Grantee may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, the Grantee shall, if it wishes to accept the Disposal Offer, give notice to the New Owner of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after notice of the determination of the arbitrator has been given to the Grantee.

15.5.3 If the Grantee gives such a notice of acceptance to the New Owner, the New Owner shall, subject to the satisfaction of any conditions referred to in such terms and conditions (including price), transfer the Highbank Assets to the Grantee in accordance with those terms and conditions on the Settlement Date.

15.5.4 If:

- (a) at the end of the 5 Business Day period referred to in *clause 15.5.2(a)*, the New Owner and the Grantee have not agreed on all terms and conditions (including price) under *clause 15.5.1* and the Grantee has not referred the matter to arbitration under *clause 15.5.2(a)*; or
- (b) at the end of the 5 Business Day period referred to in *clause 15.5.2(b)*, the Grantee has not notified acceptance under *clause 15.5.2(b)*,

the Grantee will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Highbank Assets by the New Owner.

15.6 Grantee

If, at the time that the events described in *clause 15.1.1 and 15.1.2* occur, no Disposal Notice has previously been given (so that *clause 2.5.1* would apply if a Disposal Notice were given at that time), the rights of the Grantee under this clause 15 shall be exercisable by the Joint Venture Entity unless:

- 15.6.1 EAL consents to those rights being exercised by another entity nominated by Te Rūnanga, in which case such rights shall be exercisable by such entity; or
- 15.6.2 EAL has waived the requirements of this *clause 15.6*, in which case such rights shall be exercisable by Te Rūnanga.

16 ARBITRATION

16.1 Reference to Arbitration

If the Grantee and the New Owner cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. The Grantee may commence the arbitration by giving a notice to the New Owner.

16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the New Owner and the Grantee can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the New Owner and one to be appointed by the Grantee. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

16.3.1 the determination shall be in the form of a written contract for the Disposal of the Highbank Assets incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;

16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;

16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and

16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

16.4 Parties bound by Award

The Grantee and the New Owner agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of the Grantee under *clause 15.5.2(b)*.

17 PARTICIPATION IN SALES PROCESS**17.1 Grantee Participant may participate in sales process**

Nothing in this Deed prevents any Grantee Participant participating in any sales process relating to the Highbank Assets independently of the right of first refusal granted by this Deed.

17.2 Notice

The Grantee shall give notice to the Owner if any Grantee Participant intends to participate in any such sales process. If the Owner believes a participant in any such sales process is a Grantee Participant, it may give notice to that effect to the

Grantee and the Grantee shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Owner that the participant is not a Grantee Participant. If no such notice is given, the Owner may treat the participant as a Grantee Participant until it receives notice from the Grantee advising that the participant is not a Grantee Participant.

17.3 Modification of right of first refusal

If a Grantee Participant in respect of which notice has been given under *clause 17.2* participates in such a sales process, then:

- 17.3.1 the Owner may enter into a contract to Dispose of all or any of the Highbank Assets to the Grantee Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Grantee Participant, the requirements of this Deed will apply to any future Disposal or attempted Disposal by the Owner of the Highbank Assets; and
- 17.3.2 any provision of information to, or the granting of access to information to, the Grantee Participant will satisfy the Owner's obligation under this Deed to give such information or access to the Grantee.

17.4 Participation by Te Rūnanga or EAL

Nothing in this Deed prevents Te Rūnanga or EAL participating in any sales process relating to the Highbank Assets to which *clause 2.5.1* applies independently of the right of first refusal granted by this Deed, but neither shall be a "Grantee Participant" for the purposes of this *clause 17*, and the participation by either Te Rūnanga or EAL in such a sales process will not prejudice or affect the Owner's obligations under this Deed.

18 NO PREJUDICE

If the Owner wishes to Dispose of all or any of the Highbank Assets pursuant to *clause 10.1* after a sales process in which a Grantee Participant has participated, the fact that the Grantee Participant has participated in the sales process will not prejudice or affect the Owner's obligations under this Deed except as provided in *clause 17*.

19 NOMINATION

19.1 Grantee may Nominate

The Grantee may nominate any company or other entity which is directly or indirectly wholly owned by the Grantee (or, if the Grantee is Te Rūnanga, the Ngāi Tahu Charitable Trust or any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust) to take a transfer of

the Highbank Assets which are to be transferred to the Grantee in accordance with this Deed.

19.2 Time Limit for Notice

Any notice given by the Grantee to the Owner under this *clause 19* shall be given not later than 10 Business Days before the date on which the Highbank Assets are to be transferred to the Grantee.

19.3 Conditions of Nomination

Any nomination by the Grantee under this *clause 19* will be subject to the following conditions:

- 19.3.1 the Grantee shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Owner with the notice given under this *clause 19*;
- 19.3.2 the nominee will be bound by all the terms and conditions on which the Highbank Assets are to be transferred, and entitled to the benefit of the Owner's obligations to the Grantee in respect of the Highbank Assets (in both cases, with any amendments as may be reasonably required by the Owner to ensure the Owner is not made worse off by virtue of the nomination); and
- 19.3.3 the Grantee will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Highbank Assets.

20 TIME LIMITS

Time is of the essence for all time limits imposed on the Owner and the Grantee under this Deed. However, such time limits may be extended if the Owner and the Grantee agree in writing to do so.

21 NOTICES

21.1 Written Notice

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

The Owner:*[Details to come]***Te Rūnanga o Ngāi Tahu:**

The Secretary
 Te Rūnanga o Ngāi Tahu
 Te Waipounamu House
 127 Armagh Street
 (PO Box 13 046)
 CHRISTCHURCH

Facsimile:

Facsimile: 03 365 4424

21.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

21.3 Delivered Notice

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

21.4 Posted Notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

21.5 Facsimile Notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

22 TERMINATION

The obligation of the Owner under this Deed in respect of the Highbank Assets shall terminate on a Disposal (other than the grant of a lease) of the Highbank Assets:

22.1 to the Grantee; or

22.2 in accordance with *clauses 2.2.2, 10.1, 12.3.1, 13.1 or 13.3.*

23 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

24 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above

[Execution clauses to follow]

APPENDIX
NOMINATION DEED
(Clause 19)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[OWNER]** *(the Owner)*
- (3) **[GRANTEE]** *(the Grantee)*

BACKGROUND

- A The Owner and the Grantee are parties to a Deed of Grant of Right of First Refusal dated [].
- B The Grantee has nominated the Nominee to take a transfer of the Highbank Assets, as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Owner as set out in this Deed.

NOW THE NOMINEE AGREES with the Owner and the Grantee as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Highbank Assets means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

2 NOMINEE'S COVENANT

The Nominee covenants with each of the Grantee and the Owner that it will observe and perform the obligations of Te Rūnanga under the RFR Deed in

respect of the Highbank Assets and will be bound by the terms of the RFR Deed and such agreement, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and the Grantee warrant to the Owner that the Nominee is [directly/indirectly] wholly-owned by [the Grantee/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above.

[Execution provisions]

ATTACHMENT 9.3
DEED OF GRANT OF RIGHT OF FIRST REFUSAL -
MILFORD AIRPORT

(Clause 9.3)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand, acting by and through the Minister of Transport (*the Crown Owner*)

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated [] 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting to Te Rūnanga a right of first refusal over the Milford Airport Assets.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Acceptance Date means the date specified in a Disposal Offer, by which Te Rūnanga shall accept the Disposal Offer;

Actual Indication Date means the date on which Te Rūnanga gives or is deemed to have given a notice under *clause 5.2.2*;

Assessor means an independent third party appointed for the purposes of *clause 12*;

Benchmark Offer means

- (a) the Disposal Offer; or

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- (b) any written offer subsequently made by Te Rūnanga to acquire the Milford Airport Assets in the period referred to in *clause 7.1* (or, where Te Rūnanga has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to the New Crown Owner, means any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the New Crown Owner, but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any Crown Owner;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning. For the avoidance of doubt, the granting of a lease or concession giving the exclusive right to occupy the land on which Milford Airport is situated and operate the airport business for a term of more than 5 years (including rights or renewal or extension) will be treated as Disposal unless it is granted to the Crown Owner or to another Crown Body which has complied with *clause 2.2.1*;

Disposal Notice means a notice of the Crown Owner's intention to Dispose of the Milford Airport Assets given under *clause 4*;

Disposal Offer means an offer to sell the Milford Airport Assets to Te Rūnanga complying with *clause 5.1*;

Due Diligence Process means a process pursuant to which the Crown Owner facilitates access to, and inspection of, information about the Milford Airport

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Assets and documentation relating to its activities connected with the Milford Airport Assets by prospective purchasers of the Milford Airport Assets;

Effective Control, in relation to the New Crown Owner means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the New Crown Owner or of any holding company of the New Crown Owner which:
 - (i) amount to more than 50 percent of the issued shares of the New Crown Owner (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the New Crown Owner;
 - (iii) enable that person to control the composition of the board of directors of the New Crown Owner; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the New Crown Owner, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the New Crown Owner for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Encumbrance includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Milford Airport Assets;

Holding Company has the meaning given to it in the Companies Act 1993;

Indication Date means the date specified in the Disposal Notice by which Te Rūnanga is required to respond to the Disposal Notice under *clause 5.2*;

Milford Airport Assets means the assets held by the Crown Owner in connection with its operation of the airport at Milford Sound, including the right to occupy the land on which it is situated, the runway, the taxiway, the parking area, the windsock, any buildings used in connection with, and any rights under contracts relating to, the operation, and, where the context requires, means those of the Milford Airport Assets which are subject to the Disposal Offer. For the avoidance

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of doubt, a reference to “any of” the Milford Airport Assets applies only to any portion of the Milford Airport Assets without which it would not be possible to operate the airport at Milford;

More Favourable Terms has the meaning given to it in *clause 1.2*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

New Crown Owner means a Crown Body which is a Subsidiary of the Crown Owner or a Subsidiary of the Crown Owner’s Holding Company to which the Owner has Disposed of the Milford Airport Assets pursuant to *clause 2.2.1*;

Ngāi Tahu Participant means Te Rūnanga or any party associated with Te Rūnanga or any consortium in which Te Rūnanga or any party associated with Te Rūnanga is a participant;

Permitted Change of Control means Change of Control of a Crown Owner or of any holding company of a Crown Owner where Te Rūnanga has given its prior written approval to the Change of Control;

Preliminary Disposal Notice means a notice of the Crown Owner’s intention to Dispose of the Milford Airport Assets, given under *clause 3*;

Preliminary Information Package means:

- (a) in a case where the Crown Owner intends to attempt to Dispose of the Milford Airport Assets pursuant to *clause 4.2*, information which the Crown Owner intends to provide to other prospective bidders for the Milford Airport Assets; or
- (b) in a case where the Crown Owner does not intend to attempt to Dispose of the Milford Airport Assets pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (c)*, subject to *clause 4.3.3*;

Settlement Date means the date which is 20 Business Days after:

- (a) in the case where Te Rūnanga accepts a Disposal Offer or otherwise agrees to purchase the Milford Airport Assets under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Milford Airport Assets;

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- (b) in a case where *clause 13.2* applies, the date on which Te Rūnanga gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:
 - (i) the date on which Te Rūnanga and the Crown Owner agree on a price for the Milford Airport Assets under *clause 15.5.1*; and
 - (ii) the date on which the price of the Milford Airport Assets is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Crown Owner and Te Rūnanga agree;

Subsidiary has the meaning given to it in the Companies Act 1993.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the “first-mentioned offer”) being on More Favourable Terms than any other Disposal terms, contract or offer (the “second-mentioned offer”) means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser’s point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party’s successors, heirs, executors and assigns;

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- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;
- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between Te Rūnanga and the Crown Owner.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Crown Owner shall not Dispose of any or all of the Milford Airport Assets until the requirements in this Deed have been complied with.

2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Crown Owner of the Milford Airport Assets to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Milford Airport Assets are Disposed takes the Milford Airport Assets subject to the terms of this Deed and first enters into a deed of covenant at the Crown Owner's expense in favour of Te Rūnanga to that effect; or
- 2.2.2 any person, if the person to whom the Milford Airport Assets are to be Disposed or the agreement effecting the Disposal is first approved in writing by Te Rūnanga or if Te Rūnanga has waived its rights under this Deed by notice to the Crown Owner.

3 PRELIMINARY DISPOSAL NOTICE

3.1 Crown Owner shall give Preliminary Disposal Notice

If the Crown Owner decides to attempt to Dispose of any or all of the Milford Airport Assets or otherwise takes any action that indicates that it has formed an intention to Dispose of all or any of the Milford Airport Assets, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Owner to Dispose of the Milford Airport Assets without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to Te Rūnanga.

3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;
- 3.2.2 set out the Crown Owner's intention to Dispose of the Milford Airport Assets; and
- 3.2.3 be accompanied by, or include, an offer to provide to Te Rūnanga the Preliminary Information Package, upon receipt by the Crown Owner of such confidentiality undertaking from Te Rūnanga as may reasonably be required by the Crown Owner to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to Te Rūnanga by the Crown Owner in the course of the Crown Owner's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
 - (a) preclude disclosure by Te Rūnanga of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as Te Rūnanga's confidentiality undertaking, unless such prospective purchaser is a party which the Crown Owner wishes to exclude from any sales process relating to the Milford Airport Assets and the Crown Owner has given notice to that effect to Te Rūnanga and prohibits disclosure to that party by other prospective purchasers; and
 - (b) impose more onerous obligations on Te Rūnanga than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Milford Airport Assets.

3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by Te Rūnanga, the Crown Owner shall provide the Preliminary Information Package to Te Rūnanga.

4 DISPOSAL NOTICE

4.1 Crown Owner shall give Disposal Notice

- 4.1.1 If the Crown Owner decides to Dispose of any or all of the Milford Airport Assets and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Owner to Dispose of the Milford Airport Assets without compliance with this clause, the Crown Owner shall give a Disposal Notice to Te Rūnanga. The Disposal Notice shall:

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- (a) be in writing;
- (b) have a Disposal Offer attached to it; and
- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Crown Owner decides to Dispose of any or all of the Milford Airport Assets and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1* comply with *clause 3* and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga a copy of any information which it has provided to any other prospective purchaser of the Milford Airport Assets and which is not included in the Preliminary Information Package.

4.2 Crown Owner may market Milford Airport Assets

4.2.1 Nothing in *clause 4.1* prevents the Crown Owner from attempting to Dispose of the Milford Airport Assets to any person but the Crown Owner shall not:

- (a) effect a Disposal of any or all of the Milford Airport Assets to a person other than Te Rūnanga except in accordance with the requirements of this Deed; or
- (b) enter into a contract to Dispose of any or all of the Milford Airport Assets to a person other than Te Rūnanga, unless such contract is conditional upon the Crown Owner first complying with this Deed and becoming entitled to Dispose of any or all of the Milford Airport Assets to that person under the terms of this Deed.

4.2.2 In *clause 4.2.1*, attempting to Dispose of any or all of the Milford Airport Assets means any of:

- (a) making an offer to Dispose of any or all of the Milford Airport Assets to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, any or all of the Milford Airport Assets; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to any or all of the Milford Airport Assets.

4.3 Information Package

- 4.3.1 If the Crown Owner has attempted to dispose of any or all of the Milford Airport Assets pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga on or before the date of the Disposal Notice the same package of information that was provided to other prospective purchasers of any or all of the Milford Airport Assets.
- 4.3.2 Subject to *clause 4.3.3*, if the Crown Owner has not attempted to dispose of any or all of the Milford Airport Assets pursuant to *clause 4.2*, it shall provide to Te Rūnanga with the Disposal Notice such information which is available to it and which it is entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:
- (a) the financial statements of the Crown Owner in respect of the operation of the Milford Airport Assets (if any) and other material financial and operating data relating to the operation of the Milford Airport Assets for its three most recent financial reporting periods;
 - (b) a description of the Milford Airport Assets, including summaries of, or copies of, contracts to which the Crown Owner is a party which are included in the Milford Airport Assets and a description of the major physical assets included in the Milford Airport Assets; and
 - (c) a description of the Crown Owner's operations relating to the Milford Airport Assets.
- 4.3.3 Nothing in *clause 4.3.2* requires the Crown Owner to disclose to Te Rūnanga any confidential information which the Crown Owner is not entitled to disclose to Te Rūnanga or which is not in the Crown Owner's possession. However, the Crown Owner shall use reasonable endeavours to persuade the person holding such information to provide (or to permit the Crown Owner to provide) to Te Rūnanga the information referred to in *clause 4.3.2* in a timely manner.
- 4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Crown Owner shall:
- (a) if *clause 4.3.1* applies, provide to Te Rūnanga any information which it provides to the other prospective purchasers of the Milford Airport Assets at or about the same time as it provides it to such other prospective purchasers. Nothing in this clause requires the disclosure to Te Rūnanga of information provided to a prospective purchaser in the course of due diligence in

response to a request from that person unless the information is provided to prospective purchasers generally; or

- (b) if *clause 4.3.2* applies, provide to Te Rūnanga such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to Te Rūnanga current and up to date.

4.4 Access to Information

The Crown Owner may, instead of providing information to Te Rūnanga, provide for Te Rūnanga to have reasonable access to that information. Where the Crown Owner provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided. Nothing in this *clause 4.4* affects the Crown Owner's obligations under *clause 6*.

5 DISPOSAL OFFER

5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Crown Owner to Te Rūnanga to Dispose of the Milford Airport Assets to Te Rūnanga, which shall be capable of acceptance by Te Rūnanga upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 40 Business Days after the date on which the Disposal Notice was given.

5.2 Te Rūnanga's Response

Te Rūnanga may, by the Indication Date, either:

- 5.2.1 give notice to the Crown Owner that it does not wish to purchase the Milford Airport Assets, in which case the Disposal Offer will lapse at the time at which Te Rūnanga gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Crown Owner that it may wish to purchase the Milford Airport Assets, in which case the Crown Owner shall not Dispose of the Milford Airport Assets to any person other than Te Rūnanga unless and until it has complied with the requirements of this Deed.

5.3 No Response

If Te Rūnanga gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.2* at 5.00 pm on the Indication Date.

6 DUE DILIGENCE PROCESS

6.1 Arrangements for Due Diligence

If Te Rūnanga has given, or is deemed to have given, a notice under *clause 5.2.2*, the Crown Owner shall forthwith make arrangements to permit Te Rūnanga to undertake a Due Diligence Process relating to the Milford Airport Assets during the period between the Actual Indication Date and the Acceptance Date.

6.2 Process for Due Diligence

Subject to *clause 6.3*:

6.2.1 if the Crown Owner has attempted to Dispose of the Milford Airport Assets pursuant to *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process previously permitted for any other prospective purchasers of the Milford Airport Assets; or

6.2.2 if the Crown Owner has not attempted to Dispose of the Milford Airport Assets under *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Crown Owner intends to permit for other potential purchasers of the Milford Airport Assets, and will in any event provide for Te Rūnanga to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Milford Airport Assets for the purposes of formulating an offer to purchase the Milford Airport Assets.

6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Crown Owner to disclose to Te Rūnanga information which it is not legally entitled to disclose or which is not in the Crown Owner's possession, but the Crown Owner shall use reasonable endeavours to persuade the person holding such information to provide (or permit the Crown Owner to provide) in a timely manner to Te Rūnanga any information which is in such person's possession that is reasonably required by Te Rūnanga for the purposes of formulating an offer to purchase the Milford Airport Assets.

7 NEGOTIATION

7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Crown Owner and Te Rūnanga shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Milford Airport Assets to Te Rūnanga.

7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

7.2.1 shall not be taken as implying an obligation on:

- (a) Te Rūnanga to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or
- (b) the Crown Owner to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Crown Owner, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Crown Owner from any other person; and

7.2.2 shall not require the Crown Owner or Te Rūnanga to act in a manner which is, respectively, inconsistent with its own commercial interest.

7.3 No obligation to make offer

Nothing in this Deed imposes an obligation on Te Rūnanga to make a counter-offer to the Crown Owner in response to a Disposal Offer.

8 ACCEPTANCE OF DISPOSAL OFFER

- 8.1 If Te Rūnanga accepts the Disposal Offer or otherwise agrees to purchase the Milford Airport Assets on terms and conditions (including price) agreed with the Crown Owner before or at 5.00 pm on the Acceptance Date, then the sale of the Milford Airport Assets shall be completed on the Settlement Date.
- 8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Crown Owner. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

9 NON-ACCEPTANCE OF OFFER

If:

DEED OF GRANT OR RIGHT OF FIRST REFUSAL - MILFORD AIRPORT

- 9.1 Te Rūnanga does not accept the Disposal Offer or otherwise agree to purchase the Milford Airport Assets on terms and conditions (including price) agreed with the Crown Owner before or at 5.00 pm on the Acceptance Date; or
- 9.2 Te Rūnanga gives notice to the Crown Owner that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which Te Rūnanga gave notice declining the Disposal Offer; and
- (b) 5.00 pm on the Acceptance Date.

10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1 or clause 9*, then:

- 10.1 the Crown Owner will be free to Dispose of the Milford Airport Assets to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of the Milford Airport Assets is executed within 12 months after the date on which the Disposal Offer has lapsed; but
- 10.2 the Crown Owner may not Dispose of the Milford Airport Assets:
- 10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or
- 10.2.2 after the expiry of that 12 month period,
- without again complying with this Deed in full.

11 NOTICE OF TERMS

11.1 Notice of Disposal to third party

If the Crown Owner wishes to Dispose of all or any of the Milford Airport Assets pursuant to *clause 10.1*, it shall give notice to Te Rūnanga of its intention to do so. Such notice shall:

- 11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Owner's compliance with this Deed;

- 11.1.2 subject to *clause 11.2*, set out the terms and conditions (including price);
- 11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and
- 11.1.4 be given to Te Rūnanga not less than 20 Business Days before the later of:
- (a) the proposed date of execution of the contract relating to the proposed Disposal; and
 - (b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Owner's compliance with this Deed.

11.2 Non-disclosure of terms

- 11.2.1 The Crown Owner may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to Te Rūnanga's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 11.2.2 If the Crown Owner exercises its rights under *clause 11.2.1* it shall give notice to that effect to Te Rūnanga at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 Te Rūnanga may by notice in writing to the Crown Owner, which shall be given not more than 3 Business Days after the Crown Owner has given the notice referred to in *clause 11.2.2*, require that the Crown Owner refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Owner are material.
- 11.2.4 If Te Rūnanga gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Owner are material, the Crown Owner shall disclose those terms and conditions to Te Rūnanga forthwith, and the fees and costs of the Assessor shall be borne by the Crown Owner. Otherwise, the fees and costs of the Assessor shall be borne by Te Rūnanga.

12 REFERENCE TO ASSESSOR

12.1 Appointment of Assessor

- 12.1.1 If requested by Te Rūnanga within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, the Crown Owner shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.
- 12.1.2 Subject to *clause 12.6*, Te Rūnanga's request under *clause 12.1.1* shall be made by giving notice to the Crown Owner of the request, and such notice shall include the name of the person whom Te Rūnanga proposes should be the Assessor.
- 12.1.3 If the Crown Owner accepts that the person whom Te Rūnanga proposes should be the Assessor or the Crown Owner and Te Rūnanga agree on an alternative, the Crown Owner shall forthwith appoint the person nominated by Te Rūnanga or the agreed alternative, as the case may be, as Assessor.
- 12.1.4 If the Crown Owner does not wish that the person nominated by Te Rūnanga be appointed as Assessor, and Te Rūnanga and the Crown Owner cannot agree on an alternative within 3 Business Days after Te Rūnanga's notice has been given to the Crown Owner, then:
- (a) if the Crown Owner and Te Rūnanga agree on a third party who should be asked to appoint the Assessor, the Crown Owner shall arrange for the appointment of the Assessor by that third party; or
 - (b) if the Crown Owner and Te Rūnanga have not agreed on a third party who should be asked to appoint the Assessor, the Crown Owner shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

12.2 Appointment and Conduct of Assessor

- 12.2.1 The terms of appointment of the Assessor shall include requirements that:
- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
 - (b) the Assessor shall immediately notify the parties of his or her determination; and
 - (c) the Assessor shall keep all confidential information provided to him or her by the Crown Owner or Te Rūnanga confidential.

12.2.2 The Crown Owner shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.

12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in the Assessor's opinion, have the effect of extending the 5 Business Day period referred to above.

12.3 Assessor's Determination

If:

12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later of:

- (a) the end of the 12 month period after the date on which the last Disposal Offer made by the Crown Owner lapsed; and
- (b) the date which is 20 Business Days after the date of the Assessor's determination;

12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by Te Rūnanga if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Crown Owner if the Assessor makes a determination under *clause 12.3.2*.

12.5 Binding Decision

Both the Crown Owner and Te Rūnanga agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

12.6 Appointment of Assessor

The Crown Owner or Te Rūnanga may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1*

which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or

12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

13 DISPOSAL OF MILFORD AIRPORT ASSETS TO PARTY OTHER THAN TE RŪNANGA

13.1 Disposal to third party

If:

13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, Te Rūnanga has not made a request under *clause 12.1*; or

13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Crown Owner may Dispose of the Milford Airport Assets on the terms referred to in the notice given under *clause 11.1*.

13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, Te Rūnanga may, at any time within 5 Business Days after the Assessor has given notice to Te Rūnanga of such determination, give a notice to the Crown Owner stating that it wishes to acquire the Milford Airport Assets on the terms (including price) referred to in the notice given under *clause 11.1*. If Te Rūnanga gives such a notice, then the Crown Owner shall be deemed to have entered into a contract with Te Rūnanga on the terms referred to in the notice given under *clause 11.1*.

Te Rūnanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Milford Airport Assets on such terms.

13.3 Disposal of Milford Airport Assets if Te Rūnanga does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but Te Rūnanga does not give a notice under *clause 13.2*, then the Crown Owner may Dispose of the Milford Airport Assets on the terms referred to in the notice given under *clause 11.1*.

14 WITHDRAWAL BY CROWN OWNER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Crown Owner from withdrawing a Preliminary Disposal Notice or a Disposal Notice at any time before acceptance by Te Rūnanga of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to dispose of all or any of the Milford Airport Assets again.

15 CHANGE OF CONTROL OF NEW CROWN OWNER

15.1 Notice requirement where there is Change of Control

If:

15.1.1 a Disposal of the Milford Airport Assets to a New Crown Owner occurs;
and

15.1.2 a Change of Control of the New Crown Owner occurs during the period of one year commencing on the date of the Disposal,

then, on becoming aware of that Change of Control, the New Crown Owner shall immediately give Te Rūnanga:

- (a) notice of the Change of Control;
- (b) an irrevocable Disposal Offer for all of its Milford Airport Assets on such terms and conditions (including price) to be determined under *clause 15.5*; and
- (c) an offer to provide such information as would be included in a Preliminary Information Package if the New Crown Owner were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

15.2 Consequence of failure to give Disposal Notice

If the New Crown Owner defaults in giving a notice of the Change of Control or a Disposal Offer under *clause 15.1* Te Rūnanga, acting on behalf of the New Crown Owner, no later than 20 Business Days after the date on which Te Rūnanga became aware of the Change of Control, may prepare a Disposal Offer and give a



copy to the New Crown Owner, which offers to sell the Milford Airport Assets to Te Rūnanga. Such a Disposal Offer prepared by Te Rūnanga shall be unconditional and shall be for all of the Milford Airport Assets on terms and conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1(c)*.

15.3 Deemed Approval

If Te Rūnanga fails to prepare a Disposal Offer and give a copy to the New Crown Owner within the time limit specified in *clause 15.2* it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

15.4 Provision of Information and Negotiation

Once Te Rūnanga has provided the confidentiality undertaking referred to in *clause 15.1(c)*, *clauses 3.3, 4.3.2, 4.3.4(b), 4.4, 6 and 7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1(c)* and the period referred to in *clauses 6 and 7* were the period between the date of receipt of the confidentiality undertaking referred to in *clause 15.1(c)* and the date on which the New Crown Owner and Te Rūnanga agree on the terms and conditions (including price) under *clause 15.5.1* or Te Rūnanga refers the matter to arbitration under *clause 15.5.2(a)*.

15.5 Transfer of Milford Airport Assets

- 15.5.1 If the New Crown Owner and Te Rūnanga agree on all terms and conditions (including price) within 40 Business Days of the date on which Te Rūnanga received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the New Crown Owner under *clause 15.2*, then the New Crown Owner shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Milford Airport Assets to Te Rūnanga on such terms and conditions on the Settlement Date.
- 15.5.2 If the New Crown Owner and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:
- (a) within a further period of 5 Business Days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the Disposal Offer, give notice to the New Crown Owner of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business

Days after notice of the determination of the arbitrator has been given to Te Rūnanga.

15.5.3 If Te Rūnanga gives such a notice of acceptance to the New Crown Owner, the New Crown Owner shall, subject to the satisfaction of any conditions referred to in such terms and conditions, transfer the Milford Airport Assets to Te Rūnanga in accordance with those terms and conditions (including price) on the Settlement Date.

15.5.4 If:

- (a) at the end of the 5 Business Day period referred to in *clause 15.5.2(a)*, the New Crown Owner and Te Rūnanga have not agreed on all terms and conditions (including price) under *clause 15.5.1* and Te Rūnanga has not referred the matter to arbitration under *clause 15.5.2(a)*; or
- (b) at the end of the 5 Business Day period referred to in *clause 15.5.2(b)*, Te Rūnanga has not notified acceptance under *clause 15.5.2(b)*,

Te Rūnanga will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Milford Airport Assets by the New Crown Owner.

16 ARBITRATION

16.1 Reference to Arbitration

If Te Rūnanga and the New Crown Owner cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the New Crown Owner.

16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the New Crown Owner and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the New Crown Owner and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 16.3.1 the determination shall be in the form of a written contract for the Disposal of the Milford Airport Assets incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and
- 16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

16.4 Parties bound by Award

Te Rūnanga and the New Crown Owner agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of Te Rūnanga under *clause 15.5.2(b)*.

17 PARTICIPATION IN SALES PROCESS

17.1 Ngāi Tahu Participant may participate in sales process

Nothing in this Deed prevents any Ngāi Tahu Participant participating in any sales process relating to the Milford Airport Assets independently of the right of first refusal granted by this Deed.

17.2 Notice

Te Rūnanga shall give notice to the Crown Owner if any Ngāi Tahu Participant intends to participate in any such sales process. If the Crown Owner believes a participant in any such sales process is a Ngāi Tahu Participant, it may give notice to that effect to Te Rūnanga and Te Rūnanga shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Crown Owner that the participant is not a Ngāi Tahu Participant. If no such notice is given, the Crown Owner may treat the participant as a Ngāi Tahu Participant until it receives a notice from Te Rūnanga advising that the participant is not a Ngāi Tahu Participant.

17.3 Modification of right of first refusal

If a Ngāi Tahu Participant in respect of which a notice has been given under *clause 17.2* participates in such a sales process, then:

DEED OF GRANT OR RIGHT OF FIRST REFUSAL - MILFORD AIRPORT

- 17.3.1 the Crown Owner may enter into a contract to Dispose of all or any of the Milford Airport Assets to the Ngāi Tahu Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Deed will apply to any future Disposal or attempted Disposal by the Crown Owner of the Milford Airport Assets; and
- 17.3.2 any provision of information to, or the granting of access to information to, the Ngāi Tahu Participant will satisfy the Crown Owner's obligation under this Deed to give such information or access to Te Rūnanga.

18 NO PREJUDICE

If the Crown Owner wishes to Dispose of all or any of the Milford Airport Assets pursuant to *clause 10.1* after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales process will not prejudice or affect the Crown Owner's obligations under this Deed except as provided in *clause 17*.

19 NOMINATION**19.1 Te Rūnanga may Nominate**

Te Rūnanga may nominate any of:

- 19.1.1 any company or other entity which is directly or indirectly wholly owned by Te Rūnanga;
- 19.1.2 the Ngāi Tahu Charitable Trust; and
- 19.1.3 any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust,

to take a transfer of the Milford Airport Assets which are to be transferred to Te Rūnanga in accordance with this Deed.

19.2 Time Limit for Notice

Any notice given by Te Rūnanga to the Crown Owner under this *clause 19* shall be given not later than 10 Business Days before the date on which the Milford Airport Assets are to be transferred to Te Rūnanga.

19.3 Conditions of Nomination

Any nomination by Te Rūnanga under this *clause 19* will be subject to the following conditions:

DEED OF GRANT OR RIGHT OF FIRST REFUSAL - MILFORD AIRPORT

- 19.3.1 Te Rūnanga shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Shareholder with the notice given under this *clause 19*;
- 19.3.2 the nominee will be bound by all the terms and conditions on which the Milford Airport Assets are to be transferred, and entitled to the benefit of the Crown Owner's obligations to Te Rūnanga in respect of the Milford Airport Assets (in both cases, with any amendments as may be reasonably required by the Crown Owner to ensure the Crown Owner is not made worse off by virtue of the nomination); and
- 19.3.3 Te Rūnanga will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Milford Airport Assets.

20 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Owner and Te Rūnanga under this Deed. However, such time limits may be extended if the Crown Owner and Te Rūnanga agree in writing to do so.

21 NOTICES**21.1 Written Notice**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

Crown Owner:

[Details to come]

Te Rūnanga o Ngāi Tahu:

The Secretary
Te Rūnanga o Ngāi Tahu
Te Waipounamu House
127 Armagh Street
(PO Box 13 046)
CHRISTCHURCH

Facsimile:

Facsimile: 03 365 4424

21.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

21.3 Delivered Notice

A notice or other communication delivered by hand will be deemed to have been

received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

21.4 Posted Notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

21.5 Facsimile Notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

22 TERMINATION

The obligation of the Crown Owner under this Deed in respect of the Milford Airport Assets shall terminate on a Disposal (other than the grant of a lease or a concession) of the Milford Airport Assets:

22.1 to Te Rūnanga; or

22.2 in accordance with *clauses 2.2.2, 10.1, 12.3.1, 13.1 or 13.3.*

23 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

24 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above

[Execution clauses to follow]

APPENDIX
NOMINATION DEED
(Clause 19)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[CROWN OWNER]** *(the Crown Owner)*
- (3) **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

BACKGROUND

- A The Crown Owner and Te Rūnanga are parties to a Deed of Grant of Right of First Refusal dated [].
- B Te Rūnanga has nominated the Nominee to take a transfer of the Milford Airport Assets, as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Crown Owner as set out in this Deed.

NOW THE NOMINEE AGREES with the Crown Owner and Te Rūnanga as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Milford Airport Assets means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

2 NOMINEE'S COVENANT

The Nominee covenants with each of Te Rūnanga and the Crown Owner that it will observe and perform the obligations of Te Rūnanga under the RFR Deed in respect of the Milford Airport Assets and will be bound by the terms of the RFR Deed and such agreement, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and Te Rūnanga warrant to the Crown Owner that the Nominee is [directly/indirectly] wholly-owned by [Te Rūnanga/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above.

[Execution provisions]

ATTACHMENT 9.4
DEED OF GRANT OF RIGHT OF FIRST REFUSAL -
CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED
(Clause 9.4)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Finance and the Minister of Transport (*the Crown Shareholder*)

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated [] 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting to Te Rūnanga a right of first refusal over the Specified Shares.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Acceptance Date means the date specified in a Disposal Offer, by which Te Rūnanga shall accept the Disposal Offer;

Actual Indication Date means the date on which Te Rūnanga gives or is deemed to have given a notice under *clause 5.2.2*;

Assessor means an independent third party appointed for the purposes of *clause 12*;

Benchmark Offer means

- (a) the Disposal Offer; or



DEED OF GRANT OR RIGHT OF FIRST REFUSAL - CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED

- (b) any written offer subsequently made by Te Rūnanga to acquire the Specified Shares in the period referred to in *clause 7.1* (or, where Te Rūnanga has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to the Crown Shareholder, means:

- (a) any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the Crown Shareholder; or
- (b) any arrangement entered into by the Crown Shareholder (other than an arrangement between the shareholders of the Company in circumstances where the Crown Shareholder does not have majority control) pursuant to which the Crown Shareholder grants the right to manage, or otherwise to have effective control of the management of, the assets of the Company to a person other than the Company, the Crown Shareholder or another Crown Body,

but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any Crown Shareholder;

Company means Christchurch International Airport Limited;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning;

Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares given under *clause 4*;

Disposal Offer means an offer to sell the Specified Shares to Te Rūnanga complying with *clause 5.1*;

Due Diligence Process means a process pursuant to which the Crown Shareholder facilitates access to, and inspection of, information about the Company and documentation relating to its activities by prospective purchasers of the Specified Shares;

Effective Control, in relation to the Crown Shareholder means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the Crown Shareholder or of any holding company of the Crown Shareholder which:
 - (i) amount to more than 50 percent of the issued shares of the Crown Shareholder (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the Crown Shareholder;
 - (iii) enable that person to control the composition of the board of directors of the Crown Shareholder; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the Crown Shareholder, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the Crown Shareholder for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Encumbrance includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Specified Shares;

Indication Date means the date specified in the Disposal Notice by which Te Rūnanga is required to respond to the Disposal Notice under *clause 5.2*;

More Favourable Terms has the meaning given to it in *clause 1.2*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

Ngāi Tahu Participant means Te Rūnanga or any party associated with Te Rūnanga or any consortium in which Te Rūnanga or any party associated with Te Rūnanga is a participant;

Permitted Change of Control means Change of Control of a Crown Shareholder or of any holding company of a Crown Shareholder where Te Rūnanga has given its prior written approval to the Change of Control;

Preliminary Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares, given under *clause 3*;

Preliminary Information Package means:

- (a) in a case where the Crown Shareholder intends to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which the Crown Shareholder intends to provide to other prospective bidders for the Specified Shares; or
- (b) in a case where the Crown Shareholder does not intend to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (d)*, subject to *clause 4.3.3*;

Settlement Date means the date which is 20 Business Days after:

- (a) in the case where Te Rūnanga accepts a Disposal Offer or otherwise agrees to purchase the Specified Shares under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Specified Shares;
- (b) in a case where *clause 13.2* applies, the date on which Te Rūnanga gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:
 - (i) the date on which Te Rūnanga and the Crown Shareholder agree on a price for the Specified Shares under *clause 15.5.1*; and

- (ii) the date on which the price of the Specified Shares is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Crown Shareholder and Te Rūnanga agree;

Specified Shares means, subject to *clause 22*, all of the Crown Shareholder's shares in the Company at the date of this Deed, being 14,400,000 B Shares in the Company.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the "first-mentioned offer") being on More Favourable Terms than any other Disposal terms, contract or offer (the "second-mentioned offer") means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser's point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party's successors, heirs, executors and assigns;
- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;

- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between Te Rūnanga and the Crown Shareholder.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Crown Shareholder shall not Dispose of any or all of the Specified Shares until the requirements in this Deed have been complied with.

2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Crown Shareholder of all (but not less than all) of its Specified Shares to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Specified Shares are Disposed takes the Specified Shares subject to the terms of this Deed and first enters into a deed of covenant at the Crown Shareholder's expense in favour of Te Rūnanga to that effect;
- 2.2.2 any person, if the person to whom the Specified Shares are to be Disposed or the agreement effecting the Disposal is first approved in writing by Te Rūnanga or if Te Rūnanga has waived its rights under this Deed by notice to the Crown Shareholder;
- 2.2.3 the Company, pursuant to any offer made by the Company to acquire its own shares on a pro rata basis; or
- 2.2.4 any person to which the Crown Shareholder Disposes of the Specified Shares in order to comply with the pre-emptive rights in clause 11 of, and the First Schedule to, the constitution of the Company (or any equivalent provisions in any amended or substitute constitution of the Company).

2.3 Pre-emptive Rights

2.3.1 Te Rūnanga acknowledges that unless the constitution of the Company ceases to contain pre-emptive provisions of the kind currently specified in that constitution or such provisions are waived by the other shareholder of the Company:

- (a) the obligations of the Crown under this Deed are subject to the prior obligations of the Crown under the provisions referred to in *clause 2.2.4*;

- (b) under those provisions, the Crown may be required to Dispose of the Specified Shares to the other shareholder or shareholders of the Company or to another person whom the board of the Company nominates;
- (c) if a Disposal of the kind described in *clause 2.3.1(b)* occurs, this Deed will terminate; and
- (d) if the Crown Shareholder is permitted to offer the Specified Shares for Disposal to Te Rūnanga, the constitution of the Company requires the Disposal to occur within a prescribed period, and requires the price to be not less than the lesser of the price specified in the transfer notice given under the constitution or the fair value fixed under the constitution, and the requirements of this Deed shall be interpreted to reflect those limitations on the ability of the Crown to Dispose of the Specified Shares.

2.3.2 The Crown Shareholder agrees to use reasonable endeavours to persuade the board of the Company

- (a) to nominate Te Rūnanga as a transferee of the Specified Shares; and
- (b) not to nominate any other person as a transferee,

if the other shareholder or shareholders do not exercise their pre-emption right under the constitution of the Company.

2.3.3 Nothing in this Deed indicates that the Crown Shareholder currently wishes or proposes to transfer any of the Specified Shares or constitutes an offer to transfer, the soliciting of an offer to purchase or the granting of an option, conditional agreement or other right to purchase the Specified Shares. The requirements of this Deed are intended to apply only when *clause 3.1* applies.

3 PRELIMINARY DISPOSAL NOTICE

3.1 Crown Shareholder shall give Preliminary Disposal Notice

If the Crown Shareholder decides to attempt to Dispose of any or all of the Specified Shares or otherwise takes any action that indicates that it has formed an intention to Dispose of all or any of the Specified Shares, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to Te Rūnanga.

3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;
- 3.2.2 set out the Crown Shareholder's intention to Dispose of the Specified Shares; and
- 3.2.3 be accompanied by, or include, an offer to provide to Te Rūnanga the Preliminary Information Package, upon receipt by the Crown Shareholder of such confidentiality undertaking from Te Rūnanga as may reasonably be required by the Crown Shareholder and the Company to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to Te Rūnanga by the Crown Shareholder or the Company in the course of the Crown Shareholder's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
- (a) preclude disclosure by Te Rūnanga of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as Te Rūnanga's confidentiality undertaking, unless such prospective purchaser is a party which the Crown Shareholder wishes to exclude from any sales process relating to the Specified Shares and the Crown Shareholder has given notice to that effect to Te Rūnanga and prohibits disclosure to that party by other prospective purchasers; and
 - (b) impose more onerous obligations on Te Rūnanga than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Specified Shares.

3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by Te Rūnanga, the Crown Shareholder shall provide the Preliminary Information Package to Te Rūnanga.

4 DISPOSAL NOTICE

4.1 Crown Shareholder shall give Disposal Notice

4.1.1 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, the Crown Shareholder shall give a Disposal Notice to Te Rūnanga. The Disposal Notice shall:

- (a) be in writing;

- (b) have a Disposal Offer attached to it; and
- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1*, comply with *clause 3* and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga a copy of any information which it has provided to any other prospective purchaser of the Specified Shares and which is not included in the Preliminary Information Package.

4.2 Crown Shareholder may market Specified Shares

4.2.1 Nothing in *clause 4.1* prevents the Crown Shareholder from attempting to Dispose of the Specified Shares to any person but the Crown Shareholder shall not:

- (a) effect a Disposal of the Specified Shares to a person other than Te Rūnanga except in accordance with the requirements of this Deed; or
- (b) enter into a contract to Dispose of the Specified Shares to a person other than Te Rūnanga, unless such contract is conditional upon the Crown Shareholder first complying with this Deed and becoming entitled to Dispose of the Specified Shares to that person under the terms of this Deed.

4.2.2 In *clause 4.2.1*, attempting to Dispose of the Specified Shares means any of:

- (a) making an offer to Dispose of the Specified Shares to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, the Specified Shares; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to the Specified Shares.

4.3 Information Package

4.3.1 If the Crown Shareholder has attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga on or before the date of the Disposal Notice the same package of information that was provided to other prospective purchasers of the Specified Shares.

4.3.2 Subject to *clause 4.3.3*, if the Crown Shareholder has not attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall provide to Te Rūnanga with the Disposal Notice such information which is available to it and which it is entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:

- (a) the financial statements of the Company for its three most recent financial reporting periods;
- (b) summaries of, or copies of, contracts to which the Company is a party which are material to an assessment of the business of the Company by a prospective purchaser;
- (c) a description of the major physical assets of the Company; and
- (d) a description of the Company's business.

4.3.3 Nothing in *clause 4.3.2* requires the Crown Shareholder to disclose to Te Rūnanga any confidential information which the Crown Shareholder is not entitled to disclose to Te Rūnanga or which is not in the Crown Shareholder's possession. However, the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or to permit the Crown Shareholder to provide) to Te Rūnanga the information referred to in *clause 4.3.2* in a timely manner.

4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Crown Shareholder shall:

- (a) if *clause 4.3.1* applies, provide to Te Rūnanga any information which it provides to the other prospective purchasers of the Specified Shares at or about the same time as it provides it to such other prospective purchasers. Nothing in this clause requires the disclosure to Te Rūnanga of information provided to a prospective purchaser in the course of due diligence in response to a request from that person unless the information is provided to prospective purchasers generally; or
- (b) if *clause 4.3.2* applies, provide to Te Rūnanga such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to Te Rūnanga current and up to date.

4.4 Access to Information

The Crown Shareholder may, instead of providing information to Te Rūnanga, provide for Te Rūnanga to have reasonable access to that information. Where the Crown Shareholder provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided. Nothing in this *clause 4.4* affects the Crown Shareholder's obligations under *clause 6*.

5 DISPOSAL OFFER

5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Crown Shareholder to Te Rūnanga to Dispose of the Specified Shares to Te Rūnanga, which shall be capable of acceptance by Te Rūnanga upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 40 Business Days after the date on which the Disposal Notice was given.

5.2 Te Rūnanga's Response

Te Rūnanga may, by the Indication Date, either:

- 5.2.1 give notice to the Crown Shareholder that it does not wish to purchase the Specified Shares, in which case the Disposal Offer will lapse at the time at which Te Rūnanga gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Crown Shareholder that it may wish to purchase the Specified Shares, in which case the Crown Shareholder shall not Dispose of the Specified Shares to any person other than Te Rūnanga unless and until it has complied with the requirements of this Deed.

5.3 No Response

If Te Rūnanga gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.2* at 5.00 pm on the Indication Date.

6 DUE DILIGENCE PROCESS

6.1 Arrangements for Due Diligence

If Te Rūnanga has given, or is deemed to have given, a notice under *clause 5.2.2*, the Crown Shareholder shall forthwith make arrangements to permit Te Rūnanga to undertake a Due Diligence Process relating to the Company during the period between the Actual Indication Date and the Acceptance Date.

6.2 Process for Due Diligence

Subject to *clause 6.3*:

6.2.1 if the Crown Shareholder has attempted to Dispose of the Specified Shares pursuant to *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process previously permitted for any other prospective purchasers of the Specified Shares; or

6.2.2 if the Crown Shareholder has not attempted to Dispose of the Specified Shares under *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Crown Shareholder intends to permit for other potential purchasers of the Specified Shares, and will in any event provide for Te Rūnanga to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Specified Shares for the purposes of formulating an offer to purchase the Specified Shares.

6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Crown Shareholder to disclose to Te Rūnanga information which it is not legally entitled to disclose or which is not in the Crown Shareholder's possession, but the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or permit the Crown Shareholder to provide) in a timely manner to Te Rūnanga any information which is in the Company's possession that is reasonably required by Te Rūnanga for the purposes of formulating an offer to purchase the Specified Shares.

7 NEGOTIATION

7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Crown Shareholder and Te Rūnanga shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Specified Shares to Te Rūnanga.

7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

7.2.1 shall not be taken as implying an obligation on:

- (a) Te Rūnanga to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or
- (b) the Crown Shareholder to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Crown Shareholder, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Crown Shareholder from any other person;

7.2.2 shall not require the Crown Shareholder or Te Rūnanga to act in a manner which is, respectively, inconsistent with its own commercial interest.

7.3 No obligation to make offer

Nothing in this Deed imposes an obligation on Te Rūnanga to make a counter-offer to the Crown Shareholder in response to a Disposal Offer.

8 ACCEPTANCE OF DISPOSAL OFFER

8.1 If Te Rūnanga accepts the Disposal Offer or otherwise agrees to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date, then the sale of the Specified Shares shall be completed on the Settlement Date.

8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Crown Shareholder. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

9 NON-ACCEPTANCE OF OFFER

If:

9.1 Te Rūnanga does not accept the Disposal Offer or otherwise agree to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date; or

9.2 Te Rūnanga gives notice to the Crown Shareholder that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which Te Rūnanga gave notice declining the Disposal Offer; and
- (b) 5.00 pm on the Acceptance Date.

10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1* or *clause 9*, then:

10.1 the Crown Shareholder will be free to Dispose of the Specified Shares to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of the Specified Shares is executed within 12 months after the date on which the Disposal Offer has lapsed; but

10.2 the Crown Shareholder may not Dispose of the Specified Shares:

10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or

10.2.2 after the expiry of that 12 month period;

without again complying with this Deed in full.

11 NOTICE OF TERMS

11.1 Notice of Disposal to third party

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1*, it shall give notice to Te Rūnanga of its intention to do so. Such notice shall:

11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Shareholder's compliance with this Deed;

11.1.2 subject to *clause 11.2*, set out the terms and conditions (including price);

11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and

11.1.4 be given to Te Rūnanga not less than 20 Business Days before the later of:

- (a) the proposed date of execution of the contract relating to the proposed Disposal; and
- (b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Shareholder's compliance with this Deed.

11.2 Non-disclosure of terms

- 11.2.1 The Crown Shareholder may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to Te Rūnanga's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 11.2.2 If the Crown Shareholder exercises its rights under *clause 11.2.1* it shall give notice to that effect to Te Rūnanga at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 Te Rūnanga may by notice in writing to the Crown Shareholder, which shall be given not more than 3 Business Days after the Crown Shareholder has given the notice referred to in *clause 11.2.2*, require that the Crown Shareholder refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Shareholder are material.
- 11.2.4 If Te Rūnanga gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Shareholder are material, the Crown Shareholder shall disclose those terms and conditions to Te Rūnanga forthwith, and the fees and costs of the Assessor shall be borne by the Crown Shareholder. Otherwise, the fees and costs of the Assessor shall be borne by Te Rūnanga.

12 REFERENCE TO ASSESSOR

12.1 Appointment of Assessor

- 12.1.1 If requested by Te Rūnanga within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, the Crown Shareholder shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.

- 12.1.2 Subject to *clause 12.6*, Te Rūnanga's request under *clause 12.1.1* shall be made by giving notice to the Crown Shareholder of the request, and such notice shall include the name of the person whom Te Rūnanga proposes should be the Assessor.
- 12.1.3 If the Crown Shareholder accepts that the person whom Te Rūnanga proposes should be the Assessor or the Crown Shareholder and Te Rūnanga agree on an alternative, the Crown Shareholder shall forthwith appoint the person nominated by Te Rūnanga or the agreed alternative, as the case may be, as Assessor.
- 12.1.4 If the Crown Shareholder does not wish that the person nominated by Te Rūnanga be appointed as Assessor, and Te Rūnanga and the Crown Shareholder cannot agree on an alternative within 3 Business Days after Te Rūnanga's notice has been given to the Crown Shareholder, then:
- (a) if the Crown Shareholder and Te Rūnanga agree on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by that third party; or
 - (b) if the Crown Shareholder and Te Rūnanga have not agreed on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

12.2 Appointment and Conduct of Assessor

- 12.2.1 The terms of appointment of the Assessor shall include requirements that:
- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
 - (b) the Assessor shall immediately notify the parties of his or her determination; and
 - (c) the Assessor shall keep all confidential information provided to him or her by the Crown Shareholder or Te Rūnanga confidential.
- 12.2.2 The Crown Shareholder shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.
- 12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in

the Assessor's opinion, have the effect of extending the 5 Business Day period referred to above.

12.3 Assessor's Determination

If:

12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later of:

- (a) the end of the 12 month period after the date on which the last Disposal Offer made by the Crown Shareholder lapsed; and
- (b) the date which is 20 Business Days after the date of the Assessor's determination;

12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by Te Rūnanga if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Crown Shareholder if the Assessor makes a determination under *clause 12.3.2*.

12.5 Binding Decision

Both the Crown Shareholder and Te Rūnanga agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

12.6 Appointment of Assessor

The Crown Shareholder or Te Rūnanga may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1* which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or

12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

13 DISPOSAL OF SPECIFIED SHARES TO PARTY OTHER THAN TE RŪNANGA

13.1 Disposal to third party

If:

13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, Te Rūnanga has not made a request under *clause 12.1*; or

13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, Te Rūnanga may, at any time within 5 Business Days after the Assessor has given notice to Te Rūnanga of such determination, give a notice to the Crown Shareholder stating that it wishes to acquire the Specified Shares on the terms (including price) referred to in the notice given under *clause 11.1*. If Te Rūnanga gives such a notice, then the Crown Shareholder shall be deemed to have entered into a contract with Te Rūnanga on the terms referred to in the notice given under *clause 11.1*. Te Rūnanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Specified Shares on such terms.

13.3 Disposal of Specified Shares if Te Rūnanga does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but Te Rūnanga does not give a notice under *clause 13.2*, then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

14 WITHDRAWAL BY CROWN SHAREHOLDER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Crown Shareholder from withdrawing a Preliminary Disposal Notice or a Disposal Notice

at any time before acceptance by Te Rūnanga of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to dispose of all or any of the Specified Shares again.

15 CHANGE OF CONTROL OF CROWN SHAREHOLDER

15.1 Notice requirement where there is Change of Control

If a Change of Control of the Crown Shareholder occurs then, on becoming aware of that Change of Control, the Crown Shareholder shall immediately give Te Rūnanga:

15.1.1 notice of the Change of Control;

15.1.2 an irrevocable Disposal Offer for all of its Specified Shares on such terms and conditions (including price) to be determined under *clause 15.5*; and

15.1.3 an offer to provide such information as would be included in a Preliminary Information Package if the Crown Shareholder were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

15.2 Consequence of failure to give Disposal Notice

If the Crown Shareholder defaults in giving a notice of the Change of Control or a Disposal Offer under *clause 15.1* Te Rūnanga, acting on behalf of the Crown Shareholder, no later than 20 Business Days after the date on which Te Rūnanga became aware of the Change of Control, may prepare a Disposal Offer and give a copy to the Crown Shareholder, which offers to sell the Crown Shareholder's Specified Shares to Te Rūnanga. Such a Disposal Offer prepared by Te Rūnanga shall be unconditional and shall be for all of the Crown Shareholder's Specified Shares on terms and conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1.3*.

15.3 Deemed Approval

If Te Rūnanga fails to prepare a Disposal Offer and give a copy to the Crown Shareholder within the time limit specified in *clause 15.2*, it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

15.4 Provision of Information and Negotiation

Once Te Rūnanga has provided the confidentiality undertaking referred to in *clause 15.1.3*, *clauses 3.3*, *4.3.2*, *4.3.4(b)*, *4.4*, *6* and *7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1.3* and the period referred to in *clauses 6* and *7* were the period between the date of receipt of the confidentiality undertaking referred to in

clause 15.1.3 and the date on which the Crown Shareholder and Te Rūnanga agree on the terms and conditions (including price) under *clause 15.5.1* or Te Rūnanga refers the matter to arbitration under *clause 15.5.2(a)*.

15.5 Transfer of Specified Shares

15.5.1 If the Crown Shareholder and Te Rūnanga agree on all terms and conditions (including price) within 40 Business Days of the date on which Te Rūnanga received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the Crown Shareholder under *clause 15.2*, then the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Specified Shares to Te Rūnanga on such terms and conditions on the Settlement Date.

15.5.2 If the Crown Shareholder and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:

- (a) within a further period of 5 Business Days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
- (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the Disposal Offer, give notice to the Crown Shareholder of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after notice of the determination of the arbitrator has been given to Te Rūnanga.

15.5.3 If Te Rūnanga gives such a notice of acceptance to the Crown Shareholder, the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in such terms and conditions, transfer the Specified Shares to Te Rūnanga in accordance with those terms and conditions (including price) on the Settlement Date.

15.5.4 If:

- (a) at the end of the 5 Business Day period referred to in *clause 15.5.2(a)*, the Crown Shareholder and Te Rūnanga have not agreed on all terms and conditions (including price) under *clause 15.5.1* and Te Rūnanga has not referred the matter to arbitration under *clause 15.5.2(a)*; or
- (b) at the end of the 5 Business Day period referred to in *clause 15.5.2(b)*, Te Rūnanga has not notified acceptance under *clause 15.5.2(b)*;

Te Rūnanga will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Specified Shares by the Crown Shareholder.

16 ARBITRATION

16.1 Reference to Arbitration

If the parties cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the Crown Shareholder.

16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the Crown Shareholder and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the Crown Shareholder and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 16.3.1 the determination shall be in the form of a written contract for the Disposal of the Specified Shares incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and
- 16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

16.4 Parties bound by Award

Te Rūnanga and the Crown Shareholder agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of Te Rūnanga under *clause 15.5.2(b)*.

17 PARTICIPATION IN SALES PROCESS

17.1 Ngāi Tahu Participant may participate in sales process

Nothing in this Deed prevents any Ngāi Tahu Participant participating in any sales process relating to the Specified Shares independently of the right of first refusal granted by this Deed.

17.2 Notice

Te Rūnanga shall give notice to the Crown Shareholder if any Ngāi Tahu Participant intends to participate in any such sales process. If the Crown Shareholder believes a participant in any such sales process is a Ngāi Tahu Participant, it may give notice to that effect to Te Rūnanga, and Te Rūnanga shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Crown Shareholder that the participant is not a Ngāi Tahu Participant. If no such notice is given, the Crown Shareholder may treat the participant as a Ngāi Tahu Participant until it receives a notice from Te Rūnanga advising that the participant is not a Ngāi Tahu Participant.

17.3 Modification of right of first refusal

If a Ngāi Tahu Participant in respect of which a notice has been given under *clause 17.2* participates in such a sales process, then:

17.3.1 the Crown Shareholder may enter into a contract to Dispose of all or any of the Specified Shares to the Ngāi Tahu Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Deed will apply to any future Disposal or attempted Disposal by the Crown Shareholder of the Specified Shares; and

17.3.2 any provision of information to, or the granting of access to information to, the Ngāi Tahu Participant will satisfy the Crown Shareholder's obligation under this Deed to give such information or access to Te Rūnanga.

18 NO PREJUDICE

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1* after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales

process will not prejudice or affect the Crown Shareholder's obligations under this Deed except as provided in *clause 17*.

19 NOMINATION

19.1 Te Rūnanga may Nominate

Te Rūnanga may nominate any of:

19.1.1 any company or other entity which is directly or indirectly wholly owned by Te Rūnanga;

19.1.2 the Ngāi Tahu Charitable Trust; and

19.1.3 any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust,

to take a transfer of the Specified Shares which are to be transferred to Te Rūnanga in accordance with this Deed.

19.2 Time Limit for Notice

Any notice given by Te Rūnanga to the Crown Shareholder under this *clause 19* shall be given not later than 10 Business Days before the date on which the Specified Shares are to be transferred to Te Rūnanga.

19.3 Conditions of Nomination

Any nomination by Te Rūnanga under this *clause 19* will be subject to the following conditions:

19.3.1 Te Rūnanga shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Shareholder with the notice given under this *clause 19*;

19.3.2 the nominee will be bound by all the terms and conditions on which the Specified Shares are to be transferred, and entitled to the benefit of the Crown Shareholder's obligations to Te Rūnanga in respect of the Specified Shares (in both cases, with any amendments as may be reasonably required by the Crown Shareholder to ensure the Crown Shareholder is not made worse off by virtue of the nomination); and

19.3.3 Te Rūnanga will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Specified Shares.

20 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Shareholder and Te Rūnanga under this Deed. However, such time limits may be extended if the Crown Shareholder and Te Rūnanga agree in writing to do so.

21 NOT OBLIGED TO TRANSFER A LESSER NUMBER

Nothing in this Deed shall require the Crown Shareholder to transfer less than the number of Specified Shares.

22 CHANGES TO SPECIFIED SHARES**22.1 Subdivision or Consolidation**

In the event of a subdivision or consolidation of the Specified Shares, this Deed shall apply to the subdivided or consolidated shares.

22.2 Bonus Issue

In the event that a bonus issue of shares is made in respect of the Specified Shares, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the bonus issue.

22.3 Cash Issue

In the event that the Company makes a pro rata cash issue to its shareholders, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the cash issue.

23 CONSTITUTION

The Crown Shareholder will not instigate or support any change to the constitution of the Company which prejudices the right of first refusal granted under this Deed.

24 NOTICES**24.1 Written Notice**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

Crown Shareholder:

[Details to come]

Te Rūnanga o Ngāi Tahu:

The Secretary
Te Rūnanga o Ngāi Tahu
Te Waipounamu House
127 Armagh Street
(PO Box 13 046)
CHRISTCHURCH

Facsimile:

Facsimile: 03 365 4424

24.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

24.3 Delivered Notice

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

24.4 Posted Notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

24.5 Facsimile Notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

25 TERMINATION

The obligation of the Crown Owner under this Deed in respect of the Specified Shares shall terminate on a Disposal of the Specified Shares:

25.1 to Te Rūnanga; or

25.2 in accordance with *clauses 2.2, 2.3.1, 10.1, 12.3.1, 13.1 or 13.3.*

26 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

DEED OF GRANT OR RIGHT OF FIRST REFUSAL - CHRISTCHURCH INTERNATIONAL AIRPORT LIMITED

27 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above

[Execution clauses to follow]

APPENDIX
NOMINATION DEED
(Clause 19)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[CROWN SHAREHOLDER]** *(the Crown Shareholder)*
- (3) **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

BACKGROUND

- A The Crown Shareholder and Te Rūnanga are parties to a Deed of Grant of Right of First Refusal dated [].
- B Te Rūnanga has nominated the Nominee to take a transfer of the Specified Shares, as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Crown Shareholder as set out in this Deed.

NOW THE NOMINEE AGREES with the Crown Shareholder and Te Rūnanga as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Specified Shares means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

2 NOMINEE'S COVENANT

The Nominee covenants with each of Te Rūnanga and the Crown Shareholder that it will observe and perform the obligations of Te Rūnanga under the RFR Deed and any agreement between the Crown Shareholder and Te Rūnanga in respect of the Specified Shares and will be bound by the terms of the RFR Deed and such agreement, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and Te Rūnanga warrant to the Crown Shareholder that the Nominee is [directly/indirectly] wholly-owned by [Te Rūnanga/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above.

[Execution provisions]

ATTACHMENT 9.5
DEED OF GRANT OF RIGHT OF FIRST REFUSAL -
DUNEDIN AIRPORT LIMITED

(Clause 9.5)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand, acting by and through the Minister of Transport (*the Crown Shareholder*)

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated [] 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting to Te Rūnanga a right of first refusal over the Specified Shares.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Acceptance Date means the date specified in a Disposal Offer, by which Te Rūnanga shall accept the Disposal Offer;

Actual Indication Date means the date on which Te Rūnanga gives or is deemed to have given a notice under *clause 5.2.2*;

Assessor means an independent third party appointed for the purposes of *clause 12*;

Benchmark Offer means

- (a) the Disposal Offer; or

DEED OF GRANT OR RIGHT OF FIRST REFUSAL - DUNEDIN AIRPORT LIMITED

- (b) any written offer subsequently made by Te Rūnanga to acquire the Specified Shares in the period referred to in *clause 7.1* (or, where Te Rūnanga has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to the Crown Shareholder, means:

- (a) any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the Crown Shareholder;
or
- (b) any arrangement entered into by the Crown Shareholder (other than an arrangement between the shareholders of the Company in circumstances where the Crown Shareholder does not have majority control) pursuant to which the Crown Shareholder grants the right to manage, or otherwise to have effective control of the management of, the assets of the Company to a person other than the Company, the Crown Shareholder or another Crown Body,

but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any Crown Shareholder;

Company means Dunedin Airport Limited;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning;

Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares given under *clause 4*;

Disposal Offer means an offer to sell the Specified Shares to Te Rūnanga complying with *clause 5.1*;

Due Diligence Process means a process pursuant to which the Crown Shareholder facilitates access to, and inspection of, information about the Company and documentation relating to its activities by prospective purchasers of the Specified Shares;

Effective Control, in relation to the Crown Shareholder means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the Crown Shareholder or of any holding company of the Crown Shareholder which:
 - (i) amount to more than 50 percent of the issued shares of the Crown Shareholder (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the Crown Shareholder;
 - (iii) enable that person to control the composition of the board of directors of the Crown Shareholder; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the Crown Shareholder, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the Crown Shareholder for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Encumbrance includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Specified Shares;

Indication Date means the date specified in the Disposal Notice by which Te Rūnanga is required to respond to the Disposal Notice under *clause 5.2*;

More Favourable Terms has the meaning given to it in *clause 1.2*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

Ngāi Tahu Participant means Te Rūnanga or any party associated with Te Rūnanga or any consortium in which Te Rūnanga or any party associated with Te Rūnanga is a participant;

Permitted Change of Control means Change of Control of a Crown Shareholder or of any holding company of a Crown Shareholder where Te Rūnanga has given its prior written approval to the Change of Control;

Preliminary Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares, given under *clause 3*;

Preliminary Information Package means:

- (a) in a case where the Crown Shareholder intends to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which the Crown Shareholder intends to provide to other prospective bidders for the Specified Shares; or
- (b) in a case where the Crown Shareholder does not intend to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (d)*, subject to *clause 4.3.3*;

Settlement Date means the date which is 20 Business Days after:

- (a) in the case where Te Rūnanga accepts a Disposal Offer or otherwise agrees to purchase the Specified Shares under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Specified Shares;
- (b) in a case where *clause 13.2* applies, the date on which Te Rūnanga gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:
 - (i) the date on which Te Rūnanga and the Crown Shareholder agree on a price for the Specified Shares under *clause 15.5.1*; and

- (ii) the date on which the price of the Specified Shares is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Crown Shareholder and Te Rūnanga agree;

Specified Shares means, subject to *clause 22*, all of the Crown Shareholder's shares in the Company at the date of this Deed, being 2,200,000 ordinary shares in the Company.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the "first-mentioned offer") being on More Favourable Terms than any other Disposal terms, contract or offer (the "second-mentioned offer") means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser's point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party's successors, heirs, executors and assigns;
- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;

- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between Te Rūnanga and the Crown Shareholder.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Crown Shareholder shall not Dispose of any or all of the Specified Shares until the requirements in this Deed have been complied with.

2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Crown Shareholder of all (but not less than all) of its Specified Shares to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Specified Shares are Disposed takes the Specified Shares subject to the terms of this Deed and first enters into a deed of covenant at the Crown Shareholder's expense in favour of Te Rūnanga to that effect;
- 2.2.2 any person, if the person to whom the Specified Shares are to be Disposed or the agreement effecting the Disposal is first approved in writing by Te Rūnanga or if Te Rūnanga has waived its rights under this Deed by notice to the Crown Shareholder; or
- 2.2.3 the Company, pursuant to any offer made by the Company to acquire its own shares on a pro rata basis.

3 PRELIMINARY DISPOSAL NOTICE

3.1 Crown Shareholder shall give Preliminary Disposal Notice

If the Crown Shareholder decides to attempt to Dispose of any or all of the Specified Shares or otherwise takes any action that indicates that it has formed an intention to Dispose of all or any of the Specified Shares, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to Te Rūnanga.

3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;

- 3.2.2 set out the Crown Shareholder's intention to Dispose of the Specified Shares; and
- 3.2.3 be accompanied by, or include, an offer to provide to Te Rūnanga the Preliminary Information Package, upon receipt by the Crown Shareholder of such confidentiality undertaking from Te Rūnanga as may reasonably be required by the Crown Shareholder and the Company to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to Te Rūnanga by the Crown Shareholder or the Company in the course of the Crown Shareholder's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
- (a) preclude disclosure by Te Rūnanga of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as Te Rūnanga's confidentiality undertaking, unless such prospective purchaser is a party which the Crown Shareholder wishes to exclude from any sales process relating to the Specified Shares and the Crown Shareholder has given notice to that effect to Te Rūnanga and prohibits disclosure to that party by other prospective purchasers; and
 - (b) impose more onerous obligations on Te Rūnanga than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Specified Shares.

3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by Te Rūnanga, the Crown Shareholder shall provide the Preliminary Information Package to Te Rūnanga.

4 DISPOSAL NOTICE

4.1 Crown Shareholder shall give Disposal Notice

4.1.1 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, the Crown Shareholder shall give a Disposal Notice to Te Rūnanga. The Disposal Notice shall:

- (a) be in writing;
- (b) have a Disposal Offer attached to it; and

- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1*, comply with *clause 3* and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga a copy of any information which it has provided to any other prospective purchaser of the Specified Shares and which is not included in the Preliminary Information Package.

4.2 Crown Shareholder may market Specified Shares

4.2.1 Nothing in *clause 4.1* prevents the Crown Shareholder from attempting to Dispose of the Specified Shares to any person but the Crown Shareholder shall not:

- (a) effect a Disposal of the Specified Shares to a person other than Te Rūnanga except in accordance with the requirements of this Deed; or
- (b) enter into a contract to Dispose of the Specified Shares to a person other than Te Rūnanga, unless such contract is conditional upon the Crown Shareholder first complying with this Deed and becoming entitled to Dispose of the Specified Shares to that person under the terms of this Deed.

4.2.2 In *clause 4.2.1*, attempting to Dispose of the Specified Shares means any of:

- (a) making an offer to Dispose of the Specified Shares to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, the Specified Shares; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to the Specified Shares.

4.3 Information Package

4.3.1 If the Crown Shareholder has attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga on or before the date of the Disposal Notice the same package of information that was provided to other prospective purchasers of the Specified Shares.

4.3.2 Subject to *clause 4.3.3*, if the Crown Shareholder has not attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall provide to Te Rūnanga with the Disposal Notice such information which is available to it and which it is

entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:

- (a) the financial statements of the Company for its three most recent financial reporting periods;
- (b) summaries of, or copies of, contracts to which the Company is a party which are material to an assessment of the business of the Company by a prospective purchaser;
- (c) a description of the major physical assets of the Company; and
- (d) a description of the Company's business.

4.3.3 Nothing in *clause 4.3.2* requires the Crown Shareholder to disclose to Te Rūnanga any confidential information which the Crown Shareholder is not entitled to disclose to Te Rūnanga or which is not in the Crown Shareholder's possession. However, the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or to permit the Crown Shareholder to provide) to Te Rūnanga the information referred to in *clause 4.3.2* in a timely manner.

4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Crown Shareholder shall:

- (a) if *clause 4.3.1* applies, provide to Te Rūnanga any information which it provides to the other prospective purchasers of the Specified Shares at or about the same time as it provides it to such other prospective purchasers. Nothing in this clause requires the disclosure to Te Rūnanga of information provided to a prospective purchaser in the course of due diligence in response to a request from that person unless the information is provided to prospective purchasers generally; or
- (b) if *clause 4.3.2* applies, provide to Te Rūnanga such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to Te Rūnanga current and up to date.

4.4 Access to Information

The Crown Shareholder may, instead of providing information to Te Rūnanga, provide for Te Rūnanga to have reasonable access to that information. Where the Crown Shareholder provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided.

Nothing in this *clause 4.4* affects the Crown Shareholder's obligations under *clause 6*.

5 DISPOSAL OFFER

5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Crown Shareholder to Te Rūnanga to Dispose of the Specified Shares to Te Rūnanga, which shall be capable of acceptance by Te Rūnanga upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 40 Business Days after the date on which the Disposal Notice was given.

5.2 Te Rūnanga's Response

Te Rūnanga may, by the Indication Date, either:

- 5.2.1 give notice to the Crown Shareholder that it does not wish to purchase the Specified Shares, in which case the Disposal Offer will lapse at the time at which Te Rūnanga gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Crown Shareholder that it may wish to purchase the Specified Shares, in which case the Crown Shareholder shall not Dispose of the Specified Shares to any person other than Te Rūnanga unless and until it has complied with the requirements of this Deed.

5.3 No Response

If Te Rūnanga gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.2* at 5.00 pm on the Indication Date.

6 DUE DILIGENCE PROCESS

6.1 Arrangements for Due Diligence

If Te Rūnanga has given, or is deemed to have given, a notice under *clause 5.2.2*, the Crown Shareholder shall forthwith make arrangements to permit Te Rūnanga to undertake a Due Diligence Process relating to the Company during the period between the Actual Indication Date and the Acceptance Date.

6.2 Process for Due Diligence

Subject to *clause 6.3*:

- 6.2.1 if the Crown Shareholder has attempted to Dispose of the Specified Shares pursuant to *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process previously permitted for any other prospective purchasers of the Specified Shares; or
- 6.2.2 if the Crown Shareholder has not attempted to Dispose of the Specified Shares under *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Crown Shareholder intends to permit for other potential purchasers of the Specified Shares, and will in any event provide for Te Rūnanga to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Specified Shares for the purposes of formulating an offer to purchase the Specified Shares.

6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Crown Shareholder to disclose to Te Rūnanga information which it is not legally entitled to disclose or which is not in the Crown Shareholder's possession, but the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or permit the Crown Shareholder to provide) in a timely manner to Te Rūnanga any information which is in the Company's possession that is reasonably required by Te Rūnanga for the purposes of formulating an offer to purchase the Specified Shares.

7 NEGOTIATION

7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Crown Shareholder and Te Rūnanga shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Specified Shares to Te Rūnanga.

7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

7.2.1 shall not be taken as implying an obligation on:

- (a) Te Rūnanga to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or

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- (b) the Crown Shareholder to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Crown Shareholder, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Crown Shareholder from any other person; and

7.2.2 shall not require the Crown Shareholder or Te Rūnanga to act in a manner which is, respectively, inconsistent with its own commercial interest.

7.3 No obligation to make offer

Nothing in this Deed imposes an obligation on Te Rūnanga to make a counter-offer to the Crown Shareholder in response to a Disposal Offer.

8 ACCEPTANCE OF DISPOSAL OFFER

8.1 If Te Rūnanga accepts the Disposal Offer or otherwise agrees to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date, then the sale of the Specified Shares shall be completed on the Settlement Date.

8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Crown Shareholder. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

9 NON-ACCEPTANCE OF OFFER

If:

9.1 Te Rūnanga does not accept the Disposal Offer or otherwise agree to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date; or

9.2 Te Rūnanga gives notice to the Crown Shareholder that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which Te Rūnanga gave notice declining the Disposal Offer; and
- (b) 5.00 pm on the Acceptance Date.

10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1* or *clause 9*, then:

10.1 the Crown Shareholder will be free to Dispose of the Specified Shares to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of the Specified Shares is executed within 12 months after the date on which the Disposal Offer has lapsed; but

10.2 the Crown Shareholder may not Dispose of the Specified Shares:

10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or

10.2.2 after the expiry of that 12 month period;

without again complying with this Deed in full.

11 NOTICE OF TERMS

11.1 Notice of Disposal to third party

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1*, it shall give notice to Te Rūnanga of its intention to do so. Such notice shall:

11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Shareholder's compliance with this Deed;

11.1.2 subject to *clause 11.2*, set out the terms and conditions (including price);

11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and

11.1.4 be given to Te Rūnanga not less than 20 Business Days before the later of:

(a) the proposed date of execution of the contract relating to the proposed Disposal; and

(b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Shareholder's compliance with this Deed.

11.2 Non-disclosure of terms

- 11.2.1 The Crown Shareholder may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to Te Rūnanga's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 11.2.2 If the Crown Shareholder exercises its rights under *clause 11.2.1* it shall give notice to that effect to Te Rūnanga at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 Te Rūnanga may by notice in writing to the Crown Shareholder, which shall be given not more than 3 Business Days after the Crown Shareholder has given the notice referred to in *clause 11.2.2*, require that the Crown Shareholder refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Shareholder are material.
- 11.2.4 If Te Rūnanga gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Shareholder are material, the Crown Shareholder shall disclose those terms and conditions to Te Rūnanga forthwith, and the fees and costs of the Assessor shall be borne by the Crown Shareholder. Otherwise, the fees and costs of the Assessor shall be borne by Te Rūnanga.

12 REFERENCE TO ASSESSOR

12.1 Appointment of Assessor

- 12.1.1 If requested by Te Rūnanga within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, the Crown Shareholder shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.
- 12.1.2 Subject to *clause 12.6*, Te Rūnanga's request under *clause 12.1.1* shall be made by giving notice to the Crown Shareholder of the request, and such notice shall include the name of the person whom Te Rūnanga proposes should be the Assessor.
- 12.1.3 If the Crown Shareholder accepts that the person whom Te Rūnanga proposes should be the Assessor or the Crown Shareholder and Te Rūnanga agree on an

alternative, the Crown Shareholder shall forthwith appoint the person nominated by Te Rūnanga or the agreed alternative, as the case may be, as Assessor.

12.1.4 If the Crown Shareholder does not wish that the person nominated by Te Rūnanga be appointed as Assessor, and Te Rūnanga and the Crown Shareholder cannot agree on an alternative within 3 Business Days after Te Rūnanga's notice has been given to the Crown Shareholder, then:

- (a) if the Crown Shareholder and Te Rūnanga agree on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by that third party; or
- (b) if the Crown Shareholder and Te Rūnanga have not agreed on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

12.2 Appointment and Conduct of Assessor

12.2.1 The terms of appointment of the Assessor shall include requirements that:

- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
- (b) the Assessor shall immediately notify the parties of his or her determination; and
- (c) the Assessor shall keep all confidential information provided to him or her by the Crown Shareholder or Te Rūnanga confidential.

12.2.2 The Crown Shareholder shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.

12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in the Assessor's opinion, have the effect of extending the 5 Business Day period referred to above.

12.3 Assessor's Determination

If:

- 12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later of:
- (a) the end of the 12 month period after the date on which the last Disposal Offer made by the Crown Shareholder lapsed; and
 - (b) the date which is 20 Business Days after the date of the Assessor's determination;
- 12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by Te Rūnanga if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Crown Shareholder if the Assessor makes a determination under *clause 12.3.2*.

12.5 Binding Decision

Both the Crown Shareholder and Te Rūnanga agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

12.6 Appointment of Assessor

The Crown Shareholder or Te Rūnanga may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1* which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

- 12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or

12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

13 DISPOSAL OF SPECIFIED SHARES TO PARTY OTHER THAN TE RŪNANGA

13.1 Disposal to third party

If:

13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, Te Rūnanga has not made a request under *clause 12.1*; or

13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, Te Rūnanga may, at any time within 5 Business Days after the Assessor has given notice to Te Rūnanga of such determination, give a notice to the Crown Shareholder stating that it wishes to acquire the Specified Shares on the terms (including price) referred to in the notice given under *clause 11.1*. If Te Rūnanga gives such a notice, then the Crown Shareholder shall be deemed to have entered into a contract with Te Rūnanga on the terms referred to in the notice given under *clause 11.1*. Te Rūnanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Specified Shares on such terms.

13.3 Disposal of Specified Shares if Te Rūnanga does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but Te Rūnanga does not give a notice under *clause 13.2*, then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

14 WITHDRAWAL BY CROWN SHAREHOLDER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Crown Shareholder from withdrawing a Preliminary Disposal Notice or a Disposal Notice at any time before acceptance by Te Rūnanga of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to dispose of all or any of the Specified Shares again.

15 CHANGE OF CONTROL OF CROWN SHAREHOLDER

15.1 Notice requirement where there is Change of Control

If a Change of Control of the Crown Shareholder occurs then, on becoming aware of that Change of Control, the Crown Shareholder shall immediately give Te Rūnanga:

15.1.1 notice of the Change of Control;

15.1.2 an irrevocable Disposal Offer for all of its Specified Shares on such terms and conditions (including price) to be determined under *clause 15.5*; and

15.1.3 an offer to provide such information as would be included in a Preliminary Information Package if the Crown Shareholder were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

15.2 Consequence of failure to give Disposal Notice

If the Crown Shareholder defaults in giving a notice of the Change of Control or a Disposal Offer under *clause 15.1*, Te Rūnanga, acting on behalf of the Crown Shareholder, no later than 20 Business Days after the date on which Te Rūnanga became aware of the Change of Control, may prepare a Disposal Offer and give a copy to the Crown Shareholder, which offers to sell the Crown Shareholder's Specified Shares to Te Rūnanga. Such a Disposal Offer prepared by Te Rūnanga shall be unconditional and shall be for all of the Crown Shareholder's Specified Shares on terms and conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1.3*.

15.3 Deemed Approval

If Te Rūnanga fails to prepare a Disposal Offer and give a copy to the Crown Shareholder within the time limit specified in *clause 15.2*, it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

15.4 Provision of Information and Negotiation

Once Te Rūnanga has provided the confidentiality undertaking referred to in *clause 15.1.3*, *clauses 3.3*, *4.3.2*, *4.3.4(b)*, *4.4*, *6* and *7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1.3* and the period referred to in *clauses 6* and *7* were the period between the date of receipt of the confidentiality undertaking referred to in *clause 15.1.3* and the date on which the Crown Shareholder and Te Rūnanga agree on the terms and conditions (including price) under *clause 15.5.1* or Te Rūnanga refers the matter to arbitration under *clause 15.5.2(a)*.

15.5 Transfer of Specified Shares

- 15.5.1 If the Crown Shareholder and Te Rūnanga agree on all terms and conditions (including price) within 40 Business Days of the date on which Te Rūnanga received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the Crown Shareholder under *clause 15.2*, then the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Specified Shares to Te Rūnanga on such terms and conditions on the Settlement Date.
- 15.5.2 If the Crown Shareholder and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:
- (a) within a further period of 5 Business Days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the Disposal Offer, give notice to the Crown Shareholder of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after notice of the determination of the arbitrator has been given to Te Rūnanga.
- 15.5.3 If Te Rūnanga gives such a notice of acceptance to the Crown Shareholder, the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in such terms and conditions, transfer the Specified Shares to Te Rūnanga in accordance with those terms and conditions (including price) on the Settlement Date.
- 15.5.4 If:
- (a) at the end of the 5 Business Day period referred to in *clause 15.5.2(a)*, the Crown Shareholder and Te Rūnanga have not agreed on all terms and conditions (including price) under *clause 15.5.1* and Te Rūnanga has not referred the matter to arbitration under *clause 15.5.2(a)*; or
 - (b) at the end of the 5 Business Day period referred to in *clause 15.5.2(b)*, Te Rūnanga has not notified acceptance under *clause 15.5.2(b)*,

Te Rūnanga will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Specified Shares by the Crown Shareholder.

16 ARBITRATION

16.1 Reference to Arbitration

If the parties cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the Crown Shareholder.

16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the Crown Shareholder and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the Crown Shareholder and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 16.3.1 the determination shall be in the form of a written contract for the Disposal of the Specified Shares incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and
- 16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

16.4 Parties bound by Award

Te Rūnanga and the Crown Shareholder agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of Te Rūnanga under *clause 15.5.2(b)*.

17 PARTICIPATION IN SALES PROCESS

17.1 Ngāi Tahu Participant may participate in sales process

Nothing in this Deed prevents any Ngāi Tahu Participant participating in any sales process relating to the Specified Shares independently of the right of first refusal granted by this Deed.

17.2 Notice

Te Rūnanga shall give notice to the Crown Shareholder if any Ngāi Tahu Participant intends to participate in any such sales process. If the Crown Shareholder believes a participant in any such sales process is a Ngāi Tahu Participant, it may give notice to that effect to Te Rūnanga and Te Rūnanga shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Crown Shareholder that the participant is not a Ngāi Tahu Participant. If no such notice is given, the Crown Shareholder may treat the participant as a Ngāi Tahu Participant until it receives a notice from Te Rūnanga advising that the participant is not a Ngāi Tahu Participant.

17.3 Modification of right of first refusal

If a Ngāi Tahu Participant in respect of which a notice has been given under *clause 17.2* participates in such a sales process, then:

17.3.1 the Crown Shareholder may enter into a contract to Dispose of all or any of the Specified Shares to the Ngāi Tahu Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Deed will apply to any future Disposal or attempted Disposal by the Crown Shareholder of the Specified Shares; and

17.3.2 any provision of information to, or the granting of access to information to, the Ngāi Tahu Participant will satisfy the Crown Shareholder's obligation under this Deed to give such information or access to Te Rūnanga.

18 NO PREJUDICE

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1* after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales process will not prejudice or affect the Crown Shareholder's obligations under this Deed except as provided in *clause 17*.

19 NOMINATION

19.1 Te Rūnanga may Nominate

Te Rūnanga may nominate any of:

- 19.1.1 any company or other entity which is directly or indirectly wholly owned by Te Rūnanga;
- 19.1.2 the Ngāi Tahu Charitable Trust; and
- 19.1.3 any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust,

to take a transfer of the Specified Shares which are to be transferred to Te Rūnanga in accordance with this Deed.

19.2 Time Limit for Notice

Any notice given by Te Rūnanga to the Crown Shareholder under this *clause 19* shall be given not later than 10 Business Days before the date on which the Specified Shares are to be transferred to Te Rūnanga.

19.3 Conditions of Nomination

Any nomination by Te Rūnanga under this *clause 19* will be subject to the following conditions:

- 19.3.1 Te Rūnanga shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Shareholder with the notice given under this *clause 19*;
- 19.3.2 the nominee will be bound by all the terms and conditions on which the Specified Shares are to be transferred, and entitled to the benefit of the Crown Shareholder's obligations to Te Rūnanga in respect of the Specified Shares (in both cases, with any amendments as may be reasonably required by the Crown Shareholder to ensure the Crown Shareholder is not made worse off by virtue of the nomination); and
- 19.3.3 Te Rūnanga will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Specified Shares.

20 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Shareholder and Te Rūnanga under this Deed. However, such time limits may be extended if the Crown Shareholder and Te Rūnanga agree in writing to do so.

21 NOT OBLIGED TO TRANSFER A LESSER NUMBER

Nothing in this Deed shall require the Crown Shareholder to transfer less than the number of Specified Shares.

22 CHANGES TO SPECIFIED SHARES**22.1 Subdivision or Consolidation**

In the event of a subdivision or consolidation of the Specified Shares, this Deed shall apply to the subdivided or consolidated shares.

22.2 Bonus Issue

In the event that a bonus issue of shares is made in respect of the Specified Shares, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the bonus issue.

22.3 Cash Issue

In the event that the Company makes a pro rata cash issue to its shareholders, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the cash issue.

23 NOTICES**23.1 Written Notice**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

Crown Shareholder:

[Details to come]

Facsimile:

Te Rūnanga o Ngāi Tahu:

The Secretary
Te Rūnanga o Ngāi Tahu
Te Waipounamu House
127 Armagh Street
(PO Box 13 046)
CHRISTCHURCH

Facsimile: 03 365 4424

23.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

23.3 Delivered Notice

A notice or other communication delivered by hand will be deemed to have been

received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

23.4 Posted Notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

23.5 Facsimile Notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

24 TERMINATION

The obligation of the Crown Owner under this Deed in respect of the Specified Shares shall terminate on a Disposal of the Specified Shares:

24.1 to Te Rūnanga; or

24.2 in accordance with *clauses 2.2, 10.1, 12.3.1, 13.1 or 13.3.*

25 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

26 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above.

[Execution clauses to follow]

APPENDIX
NOMINATION DEED
(Clause 19)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[CROWN SHAREHOLDER]** *(the Crown Shareholder)*
- (3) **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

BACKGROUND

- A The Crown Shareholder and Te Rūnanga are parties to a Deed of Grant of Right of First Refusal dated [].
- B Te Rūnanga has nominated the Nominee to take a transfer of the Specified Shares as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Crown Shareholder as set out in this Deed.

NOW THE NOMINEE AGREES with the Crown Shareholder and Te Rūnanga as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Specified Shares means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

2 NOMINEE'S COVENANT

The Nominee covenants with each of Te Rūnanga and the Crown Shareholder that it will observe and perform the obligations of Te Rūnanga under the RFR Deed and any agreement between the Crown Shareholder and Te Rūnanga in respect of the Specified Shares and will be bound by the terms of the RFR Deed and such agreement, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and Te Rūnanga warrant to the Crown Shareholder that the Nominee is [directly/indirectly] wholly-owned by [Te Rūnanga/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above..

[Execution provisions]

ATTACHMENT 9.6
DEED OF GRANT OF RIGHT OF FIRST REFUSAL -
INVERCARGILL AIRPORT LIMITED
(Clause 9.6)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **HER MAJESTY THE QUEEN** acting by and through the Minister of Finance and the Minister of Transport (*the Crown Shareholder*)

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated [] 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting to Te Rūnanga a right of first refusal over the Specified Shares.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Acceptance Date means the date specified in a Disposal Offer, by which Te Rūnanga shall accept the Disposal Offer;

Actual Indication Date means the date on which Te Rūnanga gives or is deemed to have given a notice under *clause 5.2.2*;

Assessor means an independent third party appointed for the purposes of *clause 12*;

Benchmark Offer means

- (a) the Disposal Offer; or

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- (b) any written offer subsequently made by Te Rūnanga to acquire the Specified Shares in the period referred to in *clause 7.1* (or, where Te Rūnanga has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to the Crown Shareholder, means:

- (a) any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the Crown Shareholder;
or
- (b) any arrangement entered into by the Crown Shareholder (other than an arrangement between the shareholders of the Company in circumstances where the Crown Shareholder does not have majority control) pursuant to which the Crown Shareholder grants the right to manage, or otherwise to have effective control of the management of, the assets of the Company to a person other than the Company, the Crown Shareholder or another Crown Body,

but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any Crown Shareholder;

Company means Invercargill Airport Limited;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Crown Shareholder means the Crown Body which holds the Specified Shares;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning;

Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares given under *clause 4*;

Disposal Offer means an offer to sell the Specified Shares to Te Rūnanga complying with *clause 5.1*;

Due Diligence Process means a process pursuant to which the Crown Shareholder facilitates access to, and inspection of, information about the Company and documentation relating to its activities by prospective purchasers of the Specified Shares;

Effective Control, in relation to the Crown Shareholder means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the Crown Shareholder or of any holding company of the Crown Shareholder which:
 - (i) amount to more than 50 percent of the issued shares of the Crown Shareholder (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the Crown Shareholder;
 - (iii) enable that person to control the composition of the board of directors of the Crown Shareholder; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the Crown Shareholder, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the Crown Shareholder for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Encumbrance includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Specified Shares;

Indication Date means the date specified in the Disposal Notice by which Te Rūnanga is required to respond to the Disposal Notice under *clause 5.2*;

More Favourable Terms has the meaning given to it in *clause 1.2*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

Ngāi Tahu Participant means Te Rūnanga or any party associated with Te Rūnanga or any consortium in which Te Rūnanga or any party associated with Te Rūnanga is a participant;

Permitted Change of Control means Change of Control of a Crown Shareholder or of any holding company of a Crown Shareholder where Te Rūnanga has given its prior written approval to the Change of Control;

Preliminary Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares, given under *clause 3*;

Preliminary Information Package means:

- (a) in a case where the Crown Shareholder intends to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which the Crown Shareholder intends to provide to other prospective bidders for the Specified Shares; or
- (b) in a case where the Crown Shareholder does not intend to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (d)*, subject to *clause 4.3.3*;

Settlement Date means the date which is 20 Business Days after:

- (a) in the case where Te Rūnanga accepts a Disposal Offer or otherwise agrees to purchase the Specified Shares under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Specified Shares;
- (b) in a case where *clause 13.2* applies, the date on which Te Rūnanga gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:

- (i) the date on which Te Rūnanga and the Crown Shareholder agree on a price for the Specified Shares under *clause 15.5.1*; and
- (ii) the date on which the price of the Specified Shares is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Crown Shareholder and Te Rūnanga agree;

Specified Shares means, subject to *clause 22*, all of the Crown Shareholder's shares in the Company at the date of this Deed, being 1,495,780 ordinary shares in the Company.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the "first-mentioned offer") being on More Favourable Terms than any other Disposal terms, contract or offer (the "second-mentioned offer") means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser's point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party's successors, heirs, executors and assigns;
- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;

- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;
- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between Te Rūnanga and the Crown Shareholder.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Crown Shareholder shall not Dispose of any or all of the Specified Shares until the requirements in this Deed have been complied with.

2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Crown Shareholder of all (but not less than all) of its Specified Shares to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Specified Shares are Disposed takes the Specified Shares subject to the terms of this Deed and first enters into a deed of covenant at the Crown Shareholder's expense in favour of Te Rūnanga to that effect;
- 2.2.2 any person, if the person to whom the Specified Shares are to be Disposed or the agreement effecting the Disposal is first approved in writing by Te Rūnanga or if Te Rūnanga has waived its rights under this Deed by notice to the Crown Shareholder; or
- 2.2.3 the Company, pursuant to any offer made by the Company to acquire its own shares on a pro rata basis.

3 PRELIMINARY DISPOSAL NOTICE

3.1 Crown Shareholder shall give Preliminary Disposal Notice

If the Crown Shareholder decides to attempt to Dispose of any or all of the Specified Shares or otherwise takes any action that indicates that it has formed an intention to Dispose of all or any of the Specified Shares, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to Te Rūnanga.

3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;
- 3.2.2 set out the Crown Shareholder's intention to Dispose of the Specified Shares; and
- 3.2.3 be accompanied by, or include, an offer to provide to Te Rūnanga the Preliminary Information Package, upon receipt by the Crown Shareholder of such confidentiality undertaking from Te Rūnanga as may reasonably be required by the Crown Shareholder and the Company to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to Te Rūnanga by the Crown Shareholder or the Company in the course of the Crown Shareholder's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
 - (a) preclude disclosure by Te Rūnanga of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as Te Rūnanga's confidentiality undertaking, unless such prospective purchaser is a party which the Crown Shareholder wishes to exclude from any sales process relating to the Specified Shares and the Crown Shareholder has given notice to that effect to Te Rūnanga and prohibits disclosure to that party by other prospective purchasers; and
 - (b) impose more onerous obligations on Te Rūnanga than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Specified Shares.

3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by Te Rūnanga, the Crown Shareholder shall provide the Preliminary Information Package to Te Rūnanga.

4 DISPOSAL NOTICE

4.1 Crown Shareholder shall give Disposal Notice

- 4.1.1 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, the Crown Shareholder shall give a Disposal Notice to Te Rūnanga. The Disposal Notice shall:

- (a) be in writing;
- (b) have a Disposal Offer attached to it; and
- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1*, comply with *clause 3* and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga a copy of any information which it has provided to any other prospective purchaser of the Specified Shares and which is not included in the Preliminary Information Package.

4.2 Crown Shareholder may market Specified Shares

4.2.1 Nothing in *clause 4.1* prevents the Crown Shareholder from attempting to Dispose of the Specified Shares to any person but the Crown Shareholder shall not:

- (a) effect a Disposal of the Specified Shares to a person other than Te Rūnanga except in accordance with the requirements of this Deed; or
- (b) enter into a contract to Dispose of the Specified Shares to a person other than Te Rūnanga, unless such contract is conditional upon the Crown Shareholder first complying with this Deed and becoming entitled to Dispose of the Specified Shares to that person under the terms of this Deed.

4.2.2 In *clause 4.2.1*, attempting to Dispose of the Specified Shares means any of:

- (a) making an offer to Dispose of the Specified Shares to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, the Specified Shares; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to the Specified Shares.

4.3 Information Package

4.3.1 If the Crown Shareholder has attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga on or before the date of the Disposal

Notice the same package of information that was provided to other prospective purchasers of the Specified Shares.

4.3.2 Subject to *clause 4.3.3*, if the Crown Shareholder has not attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall provide to Te Rūnanga with the Disposal Notice such information which is available to it and which it is entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:

- (a) the financial statements of the Company for its three most recent financial reporting periods;
- (b) summaries of, or copies of, contracts to which the Company is a party which are material to an assessment of the business of the Company by a prospective purchaser;
- (c) a description of the major physical assets of the Company; and
- (d) a description of the Company's business.

4.3.3 Nothing in *clause 4.3.2* requires the Crown Shareholder to disclose to Te Rūnanga any confidential information which the Crown Shareholder is not entitled to disclose to Te Rūnanga or which is not in the Crown Shareholder's possession. However, the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or to permit the Crown Shareholder to provide) to Te Rūnanga the information referred to in *clause 4.3.2* in a timely manner.

4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Crown Shareholder shall:

- (a) if *clause 4.3.1* applies, provide to Te Rūnanga any information which it provides to the other prospective purchasers of the Specified Shares at or about the same time as it provides it to such other prospective purchasers. Nothing in this clause requires the disclosure to Te Rūnanga of information provided to a prospective purchaser in the course of due diligence in response to a request from that person unless the information is provided to prospective purchasers generally; or
- (b) if *clause 4.3.2* applies, provide to Te Rūnanga such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to Te Rūnanga current and up to date.

4.4 Access to Information

The Crown Shareholder may, instead of providing information to Te Rūnanga, provide for Te Rūnanga to have reasonable access to that information. Where the Crown Shareholder provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided. Nothing in this *clause 4.4* affects the Crown Shareholder's obligations under *clause 6*.

5 DISPOSAL OFFER

5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Crown Shareholder to Te Rūnanga to Dispose of the Specified Shares to Te Rūnanga, which shall be capable of acceptance by Te Rūnanga upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 40 Business Days after the date on which the Disposal Notice was given.

5.2 Te Rūnanga's Response

Te Rūnanga may, by the Indication Date, either:

- 5.2.1 give notice to the Crown Shareholder that it does not wish to purchase the Specified Shares, in which case the Disposal Offer will lapse at the time at which Te Rūnanga gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Crown Shareholder that it may wish to purchase the Specified Shares, in which case the Crown Shareholder shall not Dispose of the Specified Shares to any person other than Te Rūnanga unless and until it has complied with the requirements of this Deed.

5.3 No Response

If Te Rūnanga gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.2* at 5.00 pm on the Indication Date.

6 DUE DILIGENCE PROCESS

6.1 Arrangements for Due Diligence

If Te Rūnanga has given, or is deemed to have given, a notice under *clause 5.2.2*, the Crown Shareholder shall forthwith make arrangements to permit Te Rūnanga to undertake a Due Diligence Process relating to the Company during the period between the Actual Indication Date and the Acceptance Date.

6.2 Process for Due Diligence

Subject to *clause 6.3*:

6.2.1 if the Crown Shareholder has attempted to Dispose of the Specified Shares pursuant to *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process previously permitted for any other prospective purchasers of the Specified Shares; or

6.2.2 if the Crown Shareholder has not attempted to Dispose of the Specified Shares under *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Crown Shareholder intends to permit for other potential purchasers of the Specified Shares, and will in any event provide for Te Rūnanga to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Specified Shares for the purposes of formulating an offer to purchase the Specified Shares.

6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Crown Shareholder to disclose to Te Rūnanga information which it is not legally entitled to disclose or which is not in the Crown Shareholder's possession, but the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or permit the Crown Shareholder to provide) in a timely manner to Te Rūnanga any information which is in the Company's possession that is reasonably required by Te Rūnanga for the purposes of formulating an offer to purchase the Specified Shares.

7 NEGOTIATION

7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Crown Shareholder and Te Rūnanga shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Specified Shares to Te Rūnanga.

7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

7.2.1 shall not be taken as implying an obligation on:

- (a) Te Rūnanga to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or
- (b) the Crown Shareholder to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Crown Shareholder, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Crown Shareholder from any other person; and

7.2.2 shall not require the Crown Shareholder or Te Rūnanga to act in a manner which is, respectively, inconsistent with its own commercial interest.

7.3 No obligation to make offer

Nothing in this Deed imposes an obligation on Te Rūnanga to make a counter-offer to the Crown Shareholder in response to a Disposal Offer.

8 ACCEPTANCE OF DISPOSAL OFFER

8.1 If Te Rūnanga accepts the Disposal Offer or otherwise agrees to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date, then the sale of the Specified Shares shall be completed on the Settlement Date.

8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Crown Shareholder. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

9 NON-ACCEPTANCE OF OFFER

If:

- 9.1 Te Rūnanga does not accept the Disposal Offer or otherwise agree to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date; or
- 9.2 Te Rūnanga gives notice to the Crown Shareholder that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which Te Rūnanga gave notice declining the Disposal Offer; and
- (b) 5.00 pm on the Acceptance Date.

10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1* or *clause 9*, then:

10.1 the Crown Shareholder will be free to Dispose of the Specified Shares to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of the Specified Shares is executed within 12 months after the date on which the Disposal Offer has lapsed; but

10.2 the Crown Shareholder may not Dispose of the Specified Shares:

10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or

10.2.2 after the expiry of that 12 month period,

without again complying with this Deed in full.

11 NOTICE OF TERMS

11.1 Notice of Disposal to third party

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1*, it shall give notice to Te Rūnanga of its intention to do so. Such notice shall:

11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Shareholder's compliance with this Deed;

11.1.2 subject to *clause 11.2*, set out the terms and conditions (including price);

11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and

11.1.4 be given to Te Rūnanga not less than 20 Business Days before the later of:

- (a) the proposed date of execution of the contract relating to the proposed Disposal; and
- (b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Shareholder's compliance with this Deed.

11.2 Non-disclosure of terms

- 11.2.1 The Crown Shareholder may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to Te Rūnanga's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 11.2.2 If the Crown Shareholder exercises its rights under *clause 11.2.1* it shall give notice to that effect to Te Rūnanga at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 Te Rūnanga may by notice in writing to the Crown Shareholder, which shall be given not more than 3 Business Days after the Crown Shareholder has given the notice referred to in *clause 11.2.2*, require that the Crown Shareholder refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Shareholder are material.
- 11.2.4 If Te Rūnanga gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Shareholder are material, the Crown Shareholder shall disclose those terms and conditions to Te Rūnanga forthwith, and the fees and costs of the Assessor shall be borne by the Crown Shareholder. Otherwise, the fees and costs of the Assessor shall be borne by Te Rūnanga.

12 REFERENCE TO ASSESSOR

12.1 Appointment of Assessor

- 12.1.1 If requested by Te Rūnanga within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, the Crown Shareholder shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.

- 12.1.2 Subject to *clause 12.6*, Te Rūnanga's request under *clause 12.1.1* shall be made by giving notice to the Crown Shareholder of the request, and such notice shall include the name of the person whom Te Rūnanga proposes should be the Assessor.
- 12.1.3 If the Crown Shareholder accepts that the person whom Te Rūnanga proposes should be the Assessor or the Crown Shareholder and Te Rūnanga agree on an alternative, the Crown Shareholder shall forthwith appoint the person nominated by Te Rūnanga or the agreed alternative, as the case may be, as Assessor.
- 12.1.4 If the Crown Shareholder does not wish that the person nominated by Te Rūnanga be appointed as Assessor, and Te Rūnanga and the Crown Shareholder cannot agree on an alternative within 3 Business Days after Te Rūnanga's notice has been given to the Crown Shareholder, then:
- (a) if the Crown Shareholder and Te Rūnanga agree on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by that third party; or
 - (b) if the Crown Shareholder and Te Rūnanga have not agreed on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

12.2 Appointment and Conduct of Assessor

- 12.2.1 The terms of appointment of the Assessor shall include requirements that:
- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
 - (b) the Assessor shall immediately notify the parties of his or her determination; and
 - (c) the Assessor shall keep all confidential information provided to him or her by the Crown Shareholder or Te Rūnanga confidential.
- 12.2.2 The Crown Shareholder shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.
- 12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in

the Assessor's opinion, have the effect of extending the 5 Business Day period referred to above.

12.3 Assessor's Determination

If:

12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later of:

- (a) the end of the 12 month period after the date on which the last Disposal Offer made by the Crown Shareholder lapsed; and
- (b) the date which is 20 Business Days after the date of the Assessor's determination;

12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by Te Rūnanga if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Crown Shareholder if the Assessor makes a determination under *clause 12.3.2*.

12.5 Binding Decision

Both the Crown Shareholder and Te Rūnanga agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

12.6 Appointment of Assessor

The Crown Shareholder or Te Rūnanga may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1* which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or

12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

13 DISPOSAL OF SPECIFIED SHARES TO PARTY OTHER THAN TE RŪNANGA

13.1 Disposal to third party

If:

13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, Te Rūnanga has not made a request under *clause 12.1*; or

13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, Te Rūnanga may, at any time within 5 Business Days after the Assessor has given notice to Te Rūnanga of such determination, give a notice to the Crown Shareholder stating that it wishes to acquire the Specified Shares on the terms (including price) referred to in the notice given under *clause 11.1*. If Te Rūnanga gives such a notice, then the Crown Shareholder shall be deemed to have entered into a contract with Te Rūnanga on the terms referred to in the notice given under *clause 11.1*. Te Rūnanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Specified Shares on such terms.

13.3 Disposal of Specified Shares if Te Rūnanga does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but Te Rūnanga does not give a notice under *clause 13.2*, then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

14 WITHDRAWAL BY CROWN SHAREHOLDER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Crown Shareholder from withdrawing a Preliminary Disposal Notice or a Disposal Notice

at any time before acceptance by Te Rūnanga of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to dispose of all or any of the Specified Shares again.

15 CHANGE OF CONTROL OF CROWN SHAREHOLDER

15.1 Notice requirement where there is Change of Control

If a Change of Control of the Crown Shareholder occurs then, on becoming aware of that Change of Control, the Crown Shareholder shall immediately give Te Rūnanga:

15.1.1 notice of the Change of Control;

15.1.2 an irrevocable Disposal Offer for all of its Specified Shares on such terms and conditions (including price) to be determined under *clause 15.5*; and

15.1.3 an offer to provide such information as would be included in a Preliminary Information Package if the Crown Shareholder were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

15.2 Consequence of failure to give Disposal Notice

If the Crown Shareholder defaults in giving a notice of the Change of Control or a Disposal Offer under *clause 15.1* Te Rūnanga, acting on behalf of the Crown Shareholder, no later than 20 Business Days after the date on which Te Rūnanga became aware of the Change of Control, may prepare a Disposal Offer and give a copy to the Crown Shareholder, which offers to sell the Crown Shareholder's Specified Shares to Te Rūnanga. Such a Disposal Offer prepared by Te Rūnanga shall be unconditional and shall be for all of the Crown Shareholder's Specified Shares on terms and conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1.3*.

15.3 Deemed Approval

If Te Rūnanga fails to prepare a Disposal Offer and give a copy to the Crown Shareholder within the time limit specified in *clause 15.2* it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

15.4 Provision of Information and Negotiation

Once Te Rūnanga has provided the confidentiality undertaking referred to in *clause 15.1.3*, *clauses 3.3, 4.3.2, 4.3.4(b), 4.4, 6 and 7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1.3* and the period referred to in *clauses 6 and 7* were the period between the date of receipt of the confidentiality undertaking referred to in

clause 15.1.3 and the date on which the Crown Shareholder and Te Rūnanga agree on the terms and conditions (including price) under *clause 15.5.1* or Te Rūnanga refers the matter to arbitration under *clause 15.5.2(a)*.

15.5 Transfer of Specified Shares

- 15.5.1 If the Crown Shareholder and Te Rūnanga agree on all terms and conditions (including price) within 40 Business Days of the date on which Te Rūnanga received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the Crown Shareholder under *clause 15.2*, then the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Specified Shares to Te Rūnanga on such terms and conditions on the Settlement Date.
- 15.5.2 If the Crown Shareholder and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:
- (a) within a further period of 5 Business Days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the Disposal Offer, give notice to the Crown Shareholder of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after notice of the determination of the arbitrator has been given to Te Rūnanga.
- 15.5.3 If Te Rūnanga gives such a notice of acceptance to the Crown Shareholder, the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in such terms and conditions, transfer the Specified Shares to Te Rūnanga in accordance with those terms and conditions (including price) on the Settlement Date.
- 15.5.4 If:
- (a) at the end of the 5 Business Day period referred to in *clause 15.5.2(a)*, the Crown Shareholder and Te Rūnanga have not agreed on all terms and conditions (including price) under *clause 15.5.1* and Te Rūnanga has not referred the matter to arbitration under *clause 15.5.2(a)*; or
 - (b) at the end of the 5 Business Day period referred to in *clause 15.5.2(b)*, Te Rūnanga has not notified acceptance under *clause 15.5.2(b)*,

Te Rūnanga will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Specified Shares by the Crown Shareholder.

16 ARBITRATION

16.1 Reference to Arbitration

If the parties cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the Crown Shareholder.

16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the Crown Shareholder and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the Crown Shareholder and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 16.3.1 the determination shall be in the form of a written contract for the Disposal of the Specified Shares incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and
- 16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

16.4 Parties bound by Award

Te Rūnanga and the Crown Shareholder agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of Te Rūnanga under *clause 15.5.2(b)*.

17 PARTICIPATION IN SALES PROCESS**17.1 Ngāi Tahu Participant may participate in sales process**

Nothing in this Deed prevents any Ngāi Tahu Participant participating in any sales process relating to the Specified Shares independently of the right of first refusal granted by this Deed.

17.2 Notice

Te Rūnanga shall give notice to the Crown Shareholder if any Ngāi Tahu Participant intends to participate in any such sales process. If the Crown Shareholder believes a participant in any such sales process is a Ngāi Tahu Participant, it may give notice to that effect to Te Rūnanga and Te Rūnanga shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Crown Shareholder that the participant is not a Ngāi Tahu Participant. If no such notice is given, the Crown Shareholder may treat the participant as a Ngāi Tahu Participant until it receives a notice from Te Rūnanga advising that the participant is not a Ngāi Tahu Participant.

17.3 Modification of right of first refusal

If a Ngāi Tahu Participant in respect of which a notice has been given under *clause 17.2* participates in such a sales process, then:

17.3.1 the Crown Shareholder may enter into a contract to Dispose of all or any of the Specified Shares to the Ngāi Tahu Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Deed will apply to any future Disposal or attempted Disposal by the Crown Shareholder of the Specified Shares; and

17.3.2 any provision of information to, or the granting of access to information to, the Ngāi Tahu Participant will satisfy the Crown Shareholder's obligation under this Deed to give such information or access to Te Rūnanga.

18 NO PREJUDICE

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1* after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales

process will not prejudice or affect the Crown Shareholder's obligations under this Deed except as provided in *clause 17*.

19 NOMINATION

19.1 Te Rūnanga may Nominate

Te Rūnanga may nominate any of:

- 19.1.1 any company or other entity which is directly or indirectly wholly owned by Te Rūnanga;
- 19.1.2 the Ngāi Tahu Charitable Trust; and
- 19.1.3 any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust,

to take a transfer of the Specified Shares which are to be transferred to Te Rūnanga in accordance with this Deed.

19.2 Time Limit for Notice

Any notice given by Te Rūnanga to the Crown Shareholder under this *clause 19* shall be given not later than 10 Business Days before the date on which the Specified Shares are to be transferred to Te Rūnanga.

19.3 Conditions of Nomination

Any nomination by Te Rūnanga under this *clause 19* will be subject to the following conditions:

- 19.3.1 Te Rūnanga shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Shareholder with the notice given under this *clause 19*;
- 19.3.2 the nominee will be bound by all the terms and conditions on which the Specified Shares are to be transferred, and entitled to the benefit of the Crown Shareholder's obligations to Te Rūnanga in respect of the Specified Shares (in both cases, with any amendments as may be reasonably required by the Crown Shareholder to ensure the Crown Shareholder is not made worse off by virtue of the nomination); and
- 19.3.3 Te Rūnanga will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Specified Shares.

20 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Shareholder and Te Rūnanga under this Deed. However, such time limits may be extended if the Crown Shareholder and Te Rūnanga agree in writing to do so.

21 NOT OBLIGED TO TRANSFER A LESSER NUMBER

Nothing in this Deed shall require the Crown Shareholder to transfer less than the number of Specified Shares.

22 CHANGES TO SPECIFIED SHARES**22.1 Subdivision or Consolidation**

In the event of a subdivision or consolidation of the Specified Shares, this Deed shall apply to the subdivided or consolidated shares.

22.2 Bonus Issue

In the event that a bonus issue of shares is made in respect of the Specified Shares, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the bonus issue.

22.3 Cash Issue

In the event that the Company makes a pro rata cash issue to its shareholders, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the cash issue.

23 NOTICES**23.1 Written Notice**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

Crown Shareholder:

[Details to come]

Facsimile:

Te Rūnanga o Ngāi Tahu:

The Secretary
Te Rūnanga o Ngāi Tahu
Te Waipounamu House
127 Armagh Street
(PO Box 13 046)
CHRISTCHURCH

Facsimile: 03 365 4424

23.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

23.3 Delivered Notice

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

23.4 Posted Notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

23.5 Facsimile Notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

24 TERMINATION

The obligation of the Crown Owner under this Deed in respect of the Specified Shares shall terminate on a Disposal of the Specified Shares:

24.1 to Te Rūnanga; or

24.2 in accordance with *clauses 2.2, 10.1, 12.3.1, 13.1 or 13.3.*

25 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

26 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above

[Execution clauses to follow]



APPENDIX
NOMINATION DEED
(Clause 19)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[CROWN SHAREHOLDER]** *(the Crown Shareholder)*
- (3) **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

BACKGROUND

- A The Crown Shareholder and Te Rūnanga are parties to a Deed of Grant of Right of First Refusal dated [].
- B Te Rūnanga has nominated the Nominee to take a transfer of the Specified Shares as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Crown Shareholder as set out in this Deed.

NOW THE NOMINEE AGREES with the Crown Shareholder and Te Rūnanga as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Specified Shares means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

2 NOMINEE'S COVENANT

The Nominee covenants with each of Te Rūnanga and the Crown Shareholder that it will observe and perform the obligations of Te Rūnanga under the RFR Deed and any agreement between the Crown Shareholder and Te Rūnanga in respect of the Specified Shares and will be bound by the terms of the RFR Deed and such agreement, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and Te Rūnanga warrant to the Crown Shareholder that the Nominee is [directly/indirectly] wholly-owned by [Te Rūnanga/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above.

[Execution provisions]

ATTACHMENT 9.7
DEED OF GRANT OF RIGHT OF FIRST REFUSAL -
TIMBERLANDS WEST COAST LIMITED

(Clause 9.7)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the Minister of Finance and the Minister of State-Owned Enterprises (*the Crown Shareholder*)

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated [] 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting to Te Rūnanga a right of first refusal over the Specified Shares.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Acceptance Date means the date specified in a Disposal Offer, by which Te Rūnanga shall accept the Disposal Offer;

Actual Indication Date means the date on which Te Rūnanga gives or is deemed to have given a notice under *clause 5.2.2*;

Assessor means an independent third party appointed for the purposes of *clause 12*;

Benchmark Offer means

- (a) the Disposal Offer; or
- (b) any written offer subsequently made by Te Rūnanga to acquire the Specified Shares in the period referred to in *clause 7.1* (or, where Te Rūnanga has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to the Crown Shareholder, means:

- (a) any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the Crown Shareholder; or
- (b) any arrangement entered into by the Crown Shareholder (other than an arrangement between the shareholders of the Company in circumstances where the Crown Shareholder does not have majority control) pursuant to which the Crown Shareholder grants the right to manage, or otherwise to have effective control of the management of, the assets of the Company to a person other than the Company, the Crown Shareholder or another Crown Body,

but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any Crown Shareholder;

Company means Timberlands West Coast Limited;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose means sell, transfer or otherwise dispose, and *Disposal* has a corresponding meaning;

Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares given under *clause 4*;

Disposal Offer means an offer to sell the Specified Shares to Te Rūnanga complying with *clause 5.1*;

Due Diligence Process means a process pursuant to which the Crown Shareholder facilitates access to, and inspection of, information about the Company and documentation relating to its activities by prospective purchasers of the Specified Shares;

Effective Control, in relation to the Crown Shareholder means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the Crown Shareholder or of any holding company of the Crown Shareholder which:
 - (i) amount to more than 50 percent of the issued shares of the Crown Shareholder (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the Crown Shareholder;
 - (iii) enable that person to control the composition of the board of directors of the Crown Shareholder; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the Crown Shareholder, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the Crown Shareholder for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Encumbrance includes any mortgage, lien, charge or encumbrance whether equitable or otherwise over the Specified Shares;

Indication Date means the date specified in the Disposal Notice by which Te Rūnanga is required to respond to the Disposal Notice under *clause 5.2*;

More Favourable Terms has the meaning given to it in *clause 1.2*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

Ngāi Tahu Participant means Te Rūnanga or any party associated with Te Rūnanga or any consortium in which Te Rūnanga or any party associated with Te Rūnanga is a participant;

Permitted Change of Control means Change of Control of a Crown Shareholder or of any holding company of a Crown Shareholder where Te Rūnanga has given its prior written approval to the Change of Control;

Preliminary Disposal Notice means a notice of the Crown Shareholder's intention to Dispose of the Specified Shares, given under *clause 3*;

Preliminary Information Package means:

- (a) in a case where the Crown Shareholder intends to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which the Crown Shareholder intends to provide to other prospective bidders for the Specified Shares; or
- (b) in a case where the Crown Shareholder does not intend to attempt to Dispose of the Specified Shares pursuant to *clause 4.2*, information which shall include the matters referred to in *clause 4.3.2(a) to (d)*, subject to *clause 4.3.3*;

Settlement Date means the date which is 20 Business Days after:

- (a) in the case where Te Rūnanga accepts a Disposal Offer or otherwise agrees to purchase the Specified Shares under *clause 8.1*, the later of the Acceptance Date or the date of the acceptance of the Disposal Offer or of the agreement to purchase the Specified Shares;
- (b) in a case where *clause 13.2* applies, the date on which Te Rūnanga gives a notice under that clause;
- (c) in a case where *clause 15* applies, the later of:

- (i) the date on which Te Rūnanga and the Crown Shareholder agree on a price for the Specified Shares under *clause 15.5.1*; and
- (ii) the date on which the price of the Specified Shares is determined by arbitration under *clause 15.5.2*,

or, in each case, such other date as the Crown Shareholder and Te Rūnanga agree;

Specified Shares means, subject to *clause 22*, all of the Crown Shareholder's shares in the Company at the date of this Deed, being 15,000,000 ordinary shares in the Company.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the "first-mentioned offer") being on More Favourable Terms than any other Disposal terms, contract or offer (the "second-mentioned offer") means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser's point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party's successors, heirs, executors and assigns;
- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;

- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;
- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between Te Rūnanga and the Crown Shareholder.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal Subject to Rights of First Refusal

Subject to *clause 2.2*, the Crown Shareholder shall not Dispose of any or all of the Specified Shares until the requirements in this Deed have been complied with.

2.2 Exceptions

The requirements in this Deed do not apply to the Disposal by the Crown Shareholder of all (but not less than all) of its Specified Shares to:

- 2.2.1 a Crown Body, so long as the Crown Body to which the Specified Shares are Disposed takes the Specified Shares subject to the terms of this Deed and first enters into a deed of covenant at the Crown Shareholder's expense in favour of Te Rūnanga to that effect;
- 2.2.2 any person, if the person to whom the Specified Shares are to be Disposed or the agreement effecting the Disposal is first approved in writing by Te Rūnanga or if Te Rūnanga has waived its rights under this Deed by notice to the Crown Shareholder; or
- 2.2.3 the Company, pursuant to any offer made by the Company to acquire its own shares on a pro rata basis.

3 PRELIMINARY DISPOSAL NOTICE

3.1 Crown Shareholder shall give Preliminary Disposal Notice

If the Crown Shareholder decides to attempt to Dispose of any or all of the Specified Shares or otherwise takes any action that indicates that it has formed an intention to Dispose of all or any of the Specified Shares, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, it shall immediately give a Preliminary Disposal Notice to Te Rūnanga.

3.2 Requirements for Preliminary Disposal Notice

The Preliminary Disposal Notice shall:

- 3.2.1 be in writing;
- 3.2.2 set out the Crown Shareholder's intention to Dispose of the Specified Shares; and
- 3.2.3 be accompanied by, or include, an offer to provide to Te Rūnanga the Preliminary Information Package, upon receipt by the Crown Shareholder of such confidentiality undertaking from Te Rūnanga as may reasonably be required by the Crown Shareholder and the Company to preserve the confidentiality of the Preliminary Information Package and any other confidential information which may be provided to Te Rūnanga by the Crown Shareholder or the Company in the course of the Crown Shareholder's compliance with this Deed (including pursuant to *clause 11.1*). Such undertaking shall not:
 - (a) preclude disclosure by Te Rūnanga of such information to any other prospective purchaser which has itself entered into a confidentiality undertaking to the same effect as Te Rūnanga's confidentiality undertaking, unless such prospective purchaser is a party which the Crown Shareholder wishes to exclude from any sales process relating to the Specified Shares and the Crown Shareholder has given notice to that effect to Te Rūnanga and prohibits disclosure to that party by other prospective purchasers; and
 - (b) impose more onerous obligations on Te Rūnanga than are imposed, or are to be imposed, on other prospective purchasers of any or all of the Specified Shares.

3.3 Provision of Preliminary Information Package

Upon receipt of the confidentiality undertaking referred to in *clause 3.2.3* duly executed by Te Rūnanga, the Crown Shareholder shall provide the Preliminary Information Package to Te Rūnanga.

4 DISPOSAL NOTICE

4.1 Crown Shareholder shall give Disposal Notice

- 4.1.1 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and has complied with *clause 3*, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Shareholder to Dispose of the Specified Shares without compliance with this clause, the Crown Shareholder shall give a Disposal Notice to Te Rūnanga. The Disposal Notice shall:

- (a) be in writing;
- (b) have a Disposal Offer attached to it; and
- (c) specify the Indication Date, which shall be a date not less than 10 Business Days after the date on which the Disposal Notice was given.

4.1.2 If the Crown Shareholder decides to Dispose of any or all of the Specified Shares and is required to give a Disposal Notice under *clause 4.1.1* but has not complied with *clause 3*, it shall, before it gives a Disposal Notice under *clause 4.1.1*, comply with *clause 3* and, in addition, (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga a copy of any information which it has provided to any other prospective purchaser of the Specified Shares and which is not included in the Preliminary Information Package.

4.2 Crown Shareholder may market Specified Shares

4.2.1 Nothing in *clause 4.1* prevents the Crown Shareholder from attempting to Dispose of the Specified Shares to any person but the Crown Shareholder shall not:

- (a) effect a Disposal of the Specified Shares to a person other than Te Rūnanga except in accordance with the requirements of this Deed; or
- (b) enter into a contract to Dispose of the Specified Shares to a person other than Te Rūnanga, unless such contract is conditional upon the Crown Shareholder first complying with this Deed and becoming entitled to Dispose of the Specified Shares to that person under the terms of this Deed.

4.2.2 In *clause 4.2.1*, attempting to Dispose of the Specified Shares means any of:

- (a) making an offer to Dispose of the Specified Shares to any person;
- (b) encouraging or inviting from any person an offer to acquire, or an expression of interest in acquiring, the Specified Shares; or
- (c) making a counter-offer to a person or negotiating with a person about an offer made by a person in relation to the Specified Shares.

4.3 Information Package

4.3.1 If the Crown Shareholder has attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall (subject to receipt of a confidentiality undertaking under *clause 3.2.3*) provide to Te Rūnanga on or before the date of the Disposal

Notice the same package of information that was provided to other prospective purchasers of the Specified Shares.

4.3.2 Subject to *clause 4.3.3*, if the Crown Shareholder has not attempted to dispose of the Specified Shares pursuant to *clause 4.2*, it shall provide to Te Rūnanga with the Disposal Notice such information which is available to it and which it is entitled to disclose as is required to make the information contained in the Preliminary Information Package current and up to date, and shall ensure that such information includes:

- (a) the financial statements of the Company for its three most recent financial reporting periods;
- (b) summaries of, or copies of, contracts to which the Company is a party which are material to an assessment of the business of the Company by a prospective purchaser;
- (c) a description of the major physical assets of the Company; and
- (d) a description of the Company's business.

4.3.3 Nothing in *clause 4.3.2* requires the Crown Shareholder to disclose to Te Rūnanga any confidential information which the Crown Shareholder is not entitled to disclose to Te Rūnanga or which is not in the Crown Shareholder's possession. However, the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or to permit the Crown Shareholder to provide) to Te Rūnanga the information referred to in *clause 4.3.2* in a timely manner.

4.3.4 During the period between the date of the Disposal Notice and the earlier of the dates referred to in *paragraphs (a) and (b) of clause 9*, the Crown Shareholder shall:

- (a) if *clause 4.3.1* applies, provide to Te Rūnanga any information which it provides to the other prospective purchasers of the Specified Shares at or about the same time as it provides it to such other prospective purchasers. Nothing in this clause requires the disclosure to Te Rūnanga of information provided to a prospective purchaser in the course of due diligence in response to a request from that person unless the information is provided to prospective purchasers generally; or
- (b) if *clause 4.3.2* applies, provide to Te Rūnanga such information which is available to it and which it is entitled to disclose as is required to keep the information previously provided to Te Rūnanga current and up to date.

4.4 Access to Information

The Crown Shareholder may, instead of providing information to Te Rūnanga, provide for Te Rūnanga to have reasonable access to that information. Where the Crown Shareholder provides such access, it will be deemed for the purposes of this Deed to have provided the information to which access has been provided. Nothing in this *clause 4.4* affects the Crown Shareholder's obligations under *clause 6*.

5 DISPOSAL OFFER

5.1 Contents of Disposal Offer

The Disposal Offer shall:

- 5.1.1 comprise an offer by the Crown Shareholder to Te Rūnanga to Dispose of the Specified Shares to Te Rūnanga, which shall be capable of acceptance by Te Rūnanga upon receipt;
- 5.1.2 set out all the terms and conditions of the proposed Disposal, including the price; and
- 5.1.3 specify the Acceptance Date, which shall be a date not less than 40 Business Days after the date on which the Disposal Notice was given.

5.2 Te Rūnanga's Response

Te Rūnanga may, by the Indication Date, either:

- 5.2.1 give notice to the Crown Shareholder that it does not wish to purchase the Specified Shares, in which case the Disposal Offer will lapse at the time at which Te Rūnanga gave notice under this *clause 5.2.1* and *clause 10* will apply accordingly; or
- 5.2.2 give notice to the Crown Shareholder that it may wish to purchase the Specified Shares, in which case the Crown Shareholder shall not Dispose of the Specified Shares to any person other than Te Rūnanga unless and until it has complied with the requirements of this Deed.

5.3 No Response

If Te Rūnanga gives no response to the Disposal Notice by the Indication Date, it will be deemed to have given a notice under *clause 5.2.2* at 5.00 pm on the Indication Date.

6 DUE DILIGENCE PROCESS

6.1 Arrangements for Due Diligence

If Te Rūnanga has given, or is deemed to have given, a notice under *clause 5.2.2*, the Crown Shareholder shall forthwith make arrangements to permit Te Rūnanga to undertake a Due Diligence Process relating to the Company during the period between the Actual Indication Date and the Acceptance Date.

6.2 Process for Due Diligence

Subject to *clause 6.3*:

6.2.1 if the Crown Shareholder has attempted to Dispose of the Specified Shares pursuant to *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process previously permitted for any other prospective purchasers of the Specified Shares; or

6.2.2 if the Crown Shareholder has not attempted to Dispose of the Specified Shares under *clause 4.2*, the Due Diligence Process in which Te Rūnanga will be permitted to participate will be no more restrictive and no less comprehensive than the process which the Crown Shareholder intends to permit for other potential purchasers of the Specified Shares, and will in any event provide for Te Rūnanga to inspect, or have access to, such information as would be reasonably required by a prospective purchaser of the Specified Shares for the purposes of formulating an offer to purchase the Specified Shares.

6.3 Confidential Information

Nothing in *clause 6.1* or *clause 6.2* requires the Crown Shareholder to disclose to Te Rūnanga information which it is not legally entitled to disclose or which is not in the Crown Shareholder's possession, but the Crown Shareholder shall use reasonable endeavours to persuade the Company to provide (or permit the Crown Shareholder to provide) in a timely manner to Te Rūnanga any information which is in the Company's possession that is reasonably required by Te Rūnanga for the purposes of formulating an offer to purchase the Specified Shares.

7 NEGOTIATION

7.1 Negotiation

During the period between the Actual Indication Date and the Acceptance Date, the Crown Shareholder and Te Rūnanga shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of the Specified Shares to Te Rūnanga.

7.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 7.1*:

7.2.1 shall not be taken as implying an obligation on:

- (a) Te Rūnanga to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 7.1*; or
- (b) the Crown Shareholder to accept any offer made to it during the negotiations referred to in *clause 7.1* which is, in the opinion of the Crown Shareholder, on More Favourable Terms than any contract entered into under *clause 4.2.1(b)* or any bona fide offer already received by the Crown Shareholder from any other person; and

7.2.2 shall not require the Crown Shareholder or Te Rūnanga to act in a manner which is, respectively, inconsistent with its own commercial interest.

7.3 No obligation to make offer

Nothing in this Deed imposes an obligation on Te Rūnanga to make a counter-offer to the Crown Shareholder in response to a Disposal Offer.

8 ACCEPTANCE OF DISPOSAL OFFER

8.1 If Te Rūnanga accepts the Disposal Offer or otherwise agrees to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date, then the sale of the Specified Shares shall be completed on the Settlement Date.

8.2 Any acceptance of the Disposal Offer shall be effected by giving notice to the Crown Shareholder. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

9 NON-ACCEPTANCE OF OFFER

If:

- 9.1 Te Rūnanga does not accept the Disposal Offer or otherwise agree to purchase the Specified Shares on terms and conditions (including price) agreed with the Crown Shareholder before or at 5.00 pm on the Acceptance Date; or
- 9.2 Te Rūnanga gives notice to the Crown Shareholder that it declines the Disposal Offer at or before that time,

the Disposal Offer will lapse at the earlier of:

- (a) the time at which Te Rūnanga gave notice declining the Disposal Offer; and
- (b) 5.00 pm on the Acceptance Date.

10 CONSEQUENCES OF LAPSE OF OFFER

If the Disposal Offer lapses in accordance with *clause 5.2.1* or *clause 9*, then:

10.1 the Crown Shareholder will be free to Dispose of the Specified Shares to any person so long as the Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of the Specified Shares is executed within 12 months after the date on which the Disposal Offer has lapsed; but

10.2 the Crown Shareholder may not Dispose of the Specified Shares:

10.2.1 during the 12 month period referred to in *clause 10.1* on More Favourable Terms than the Benchmark Offer; or

10.2.2 after the expiry of that 12 month period,

without again complying with this Deed in full.

11 NOTICE OF TERMS

11.1 Notice of Disposal to third party

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1*, it shall give notice to Te Rūnanga of its intention to do so. Such notice shall:

11.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Shareholder's compliance with this Deed;

11.1.2 subject to *clause 11.2*, set out the terms and conditions (including price);

11.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and

11.1.4 be given to Te Rūnanga not less than 20 Business Days before the later of:

- (a) the proposed date of execution of the contract relating to the proposed Disposal; and
- (b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Shareholder's compliance with this Deed.

11.2 Non-disclosure of terms

- 11.2.1 The Crown Shareholder may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to Te Rūnanga's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 11.2.2 If the Crown Shareholder exercises its rights under *clause 11.2.1* it shall give notice to that effect to Te Rūnanga at the same time as it gives notice under *clause 11.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 11.1*.
- 11.2.3 Te Rūnanga may by notice in writing to the Crown Shareholder, which shall be given not more than 3 Business Days after the Crown Shareholder has given the notice referred to in *clause 11.2.2*, require that the Crown Shareholder refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Shareholder are material.
- 11.2.4 If Te Rūnanga gives a notice under *clause 11.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 12.1.3* and *12.1.4*, and *clause 12.2* will apply with any necessary modifications.
- 11.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Shareholder are material, the Crown Shareholder shall disclose those terms and conditions to Te Rūnanga forthwith, and the fees and costs of the Assessor shall be borne by the Crown Shareholder. Otherwise, the fees and costs of the Assessor shall be borne by Te Rūnanga.

12 REFERENCE TO ASSESSOR

12.1 Appointment of Assessor

- 12.1.1 If requested by Te Rūnanga within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, the Crown Shareholder shall refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.

- 12.1.2 Subject to *clause 12.6*, Te Rūnanga's request under *clause 12.1.1* shall be made by giving notice to the Crown Shareholder of the request, and such notice shall include the name of the person whom Te Rūnanga proposes should be the Assessor.
- 12.1.3 If the Crown Shareholder accepts that the person whom Te Rūnanga proposes should be the Assessor or the Crown Shareholder and Te Rūnanga agree on an alternative, the Crown Shareholder shall forthwith appoint the person nominated by Te Rūnanga or the agreed alternative, as the case may be, as Assessor.
- 12.1.4 If the Crown Shareholder does not wish that the person nominated by Te Rūnanga be appointed as Assessor, and Te Rūnanga and the Crown Shareholder cannot agree on an alternative within 3 Business Days after Te Rūnanga's notice has been given to the Crown Shareholder, then:
- (a) if the Crown Shareholder and Te Rūnanga agree on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by that third party; or
 - (b) if the Crown Shareholder and Te Rūnanga have not agreed on a third party who should be asked to appoint the Assessor, the Crown Shareholder shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

12.2 Appointment and Conduct of Assessor

- 12.2.1 The terms of appointment of the Assessor shall include requirements that:
- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
 - (b) the Assessor shall immediately notify the parties of his or her determination; and
 - (c) the Assessor shall keep all confidential information provided to him or her by the Crown Shareholder or Te Rūnanga confidential.
- 12.2.2 The Crown Shareholder shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.
- 12.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not, in

the Assessor's opinion, have the effect of extending the 5 Business Day period referred to above.

12.3 Assessor's Determination

If:

12.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 10.1* shall apply, and the 12 month period referred to in *clause 10* shall be deemed to end on the later:

(a) the end of the 12 month period after the date on which the last Disposal Offer made by the Crown Shareholder lapsed; and

(b) the date which is 20 Business Days after the date of the Assessor's determination;

12.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 13.2* shall apply.

12.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by Te Rūnanga if the Assessor makes a determination under *clause 12.3.1* and shall be borne by the Crown Shareholder if the Assessor makes a determination under *clause 12.3.2*.

12.5 Binding Decision

Both the Crown Shareholder and Te Rūnanga agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

12.6 Appointment of Assessor

The Crown Shareholder or Te Rūnanga may, at any time after the Indication Date, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 12.1*. In that event, the provisions of *clause 12.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 12.1* which occurs within 6 months after the appointment of an Assessor under this *clause 12.6* will be a reference to the Assessor appointed under this *clause 12.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

- 12.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 12.6* that; or
- 12.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

13 DISPOSAL OF SPECIFIED SHARES TO PARTY OTHER THAN TE RŪNANGA

13.1 Disposal to third party

If:

- 13.1.1 within 5 Business Days after the notice referred to in *clause 11.1* has been given to Te Rūnanga, Te Rūnanga has not made a request under *clause 12.1*; or
- 13.1.2 the Assessor has made a determination under *clause 12.3.1*,

then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

13.2 Notice to acquire

If the Assessor makes a determination under *clause 12.3.2*, Te Rūnanga may, at any time within 5 Business Days after the Assessor has given notice to Te Rūnanga of such determination, give a notice to the Crown Shareholder stating that it wishes to acquire the Specified Shares on the terms (including price) referred to in the notice given under *clause 11.1*. If Te Rūnanga gives such a notice, then the Crown Shareholder shall be deemed to have entered into a contract with Te Rūnanga on the terms referred to in the notice given under *clause 11.1*. Te Rūnanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 11.1*, other than the condition referred to in *clause 4.2*, if relevant) to acquire the Specified Shares on such terms.

13.3 Disposal of Specified Shares if Te Rūnanga does not wish to acquire them

If the Assessor makes a determination under *clause 12.3.2*, but Te Rūnanga does not give a notice under *clause 13.2*, then the Crown Shareholder may Dispose of the Specified Shares on the terms referred to in the notice given under *clause 11.1*.

14 WITHDRAWAL BY CROWN SHAREHOLDER

Except as provided in *clause 15*, nothing in this Deed shall prevent the Crown Shareholder from withdrawing a Preliminary Disposal Notice or a Disposal Notice

at any time before acceptance by Te Rūnanga of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to attempt to dispose of all or any of the Specified Shares again.

15 CHANGE OF CONTROL OF CROWN SHAREHOLDER

15.1 Notice requirement where there is Change of Control

If a Change of Control of the Crown Shareholder occurs then, on becoming aware of that Change of Control, the Crown Shareholder shall immediately give Te Rūnanga:

15.1.1 notice of the Change of Control;

15.1.2 an irrevocable Disposal Offer for all of its Specified Shares on such terms and conditions (including price) to be determined under *clause 15.5*; and

15.1.3 an offer to provide such information as would be included in a Preliminary Information Package if the Crown Shareholder were giving a notice under *clause 3.2* upon receipt of a confidentiality undertaking of the kind referred to in *clause 3.2.3*.

15.2 Consequence of failure to give Disposal Notice

If the Crown Shareholder defaults in giving a notice of the Change of Control or a Disposal Offer under *clause 15.1* Te Rūnanga, acting on behalf of the Crown Shareholder, no later than 20 Business Days after the date on which Te Rūnanga became aware of the Change of Control, may prepare a Disposal Offer and give a copy to the Crown Shareholder, which offers to sell the Crown Shareholder's Specified Shares to Te Rūnanga. Such a Disposal Offer prepared by Te Rūnanga shall be unconditional and shall be for all of the Crown Shareholder's Specified Shares on terms and conditions (including price) to be determined under *clause 15.5* and will be deemed to include the offer referred to in *clause 15.1.3*.

15.3 Deemed Approval

If Te Rūnanga fails to prepare a Disposal Offer and give a copy to the Crown Shareholder within the time limit specified in *clause 15.2* it will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*.

15.4 Provision of Information and Negotiation

Once Te Rūnanga has provided the confidentiality undertaking referred to in *clause 15.1.3*, *clauses 3.3, 4.3.2, 4.3.4(b), 4.4, 6 and 7* will apply as if references in those clauses to the Preliminary Information Package were to the information referred to in *clause 15.1.3* and the period referred to in *clauses 6 and 7* were the period between the date of receipt of the confidentiality undertaking referred to in

clause 15.1.3 and the date on which the Crown Shareholder and Te Rūnanga agree on the terms and conditions (including price) under *clause 15.5.1* or Te Rūnanga refers the matter to arbitration under *clause 15.5.2(a)*.

15.5 Transfer of Specified Shares

- 15.5.1 If the Crown Shareholder and Te Rūnanga agree on all terms and conditions (including price) within 40 Business Days of the date on which Te Rūnanga received the notice and Disposal Offer under *clause 15.1*, or gave a copy of a Disposal Offer to the Crown Shareholder under *clause 15.2*, then the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, transfer the Specified Shares to Te Rūnanga on such terms and conditions on the Settlement Date.
- 15.5.2 If the Crown Shareholder and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 15.5.1*, then:
- (a) within a further period of 5 Business Days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with *clause 16*; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the Disposal Offer, give notice to the Crown Shareholder of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after notice of the determination of the arbitrator has been given to Te Rūnanga.
- 15.5.3 If Te Rūnanga gives such a notice of acceptance to the Crown Shareholder, the Crown Shareholder shall, subject to the satisfaction of any conditions referred to in such terms and conditions, transfer the Specified Shares to Te Rūnanga in accordance with those terms and conditions (including price) on the Settlement Date.
- 15.5.4 If:
- (a) at the end of the 5 Business Day period referred to in *clause 15.5.2(a)*, the Crown Shareholder and Te Rūnanga have not agreed on all terms and conditions (including price) under *clause 15.5.1* and Te Rūnanga has not referred the matter to arbitration under *clause 15.5.2(a)*; or
 - (b) at the end of the 5 Business Day period referred to in *clause 15.5.2(b)*, Te Rūnanga has not notified acceptance under *clause 15.5.2(b)*,

Te Rūnanga will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Disposal of the Specified Shares by the Crown Shareholder.

16 ARBITRATION

16.1 Reference to Arbitration

If the parties cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 15.1* or *clause 15.2* and the matters which are not agreed are referred to arbitration under *clause 15.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the Crown Shareholder.

16.2 Conduct of Arbitration

The arbitration shall be conducted by one arbitrator, if the Crown Shareholder and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the Crown Shareholder and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

16.3 Terms of Appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 16.3.1 the determination shall be in the form of a written contract for the Disposal of the Specified Shares incorporating all those terms and conditions (including price) which have already been agreed by the parties (if any) and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 16.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 16.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and
- 16.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

16.4 Parties bound by Award

Te Rūnanga and the Crown Shareholder agree to be bound by the award in the arbitration. Nothing in this *clause 16.4* affects the rights of Te Rūnanga under *clause 15.5.2(b)*.

17 PARTICIPATION IN SALES PROCESS

17.1 Ngāi Tahu Participant may participate in sales process

Nothing in this Deed prevents any Ngāi Tahu Participant participating in any sales process relating to the Specified Shares independently of the right of first refusal granted by this Deed.

17.2 Notice

Te Rūnanga shall give notice to the Crown Shareholder if any Ngāi Tahu Participant intends to participate in any such sales process. If the Crown Shareholder believes a participant in any such sales process is a Ngāi Tahu Participant, it may give notice to that effect to Te Rūnanga and Te Rūnanga shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Crown Shareholder that the participant is not a Ngāi Tahu Participant. If no such notice is given, the Crown Shareholder may treat the participant as a Ngāi Tahu Participant until it receives a notice from Te Rūnanga advising that the participant is not a Ngāi Tahu Participant.

17.3 Modification of right of first refusal

If a Ngāi Tahu Participant participates in such a sales process, then:

17.3.1 the Crown Shareholder may enter into a contract to Dispose of all or any of the Specified Shares to the Ngāi Tahu Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Deed will apply to any future Disposal or attempted Disposal by the Crown Shareholder of the Specified Shares; and

17.3.2 any provision of information to, or the granting of access to information to, the Ngāi Tahu Participant will satisfy the Crown Shareholder's obligation under this Deed to give such information or access to Te Rūnanga.

18 NO PREJUDICE

If the Crown Shareholder wishes to Dispose of all or any of the Specified Shares pursuant to *clause 10.1* after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales

process will not prejudice or affect the Crown Shareholder's obligations under this Deed except as provided in *clause 17*.

19 NOMINATION

19.1 Te Rūnanga may Nominate

Te Rūnanga may nominate any of:

19.1.1 any company or other entity which is directly or indirectly wholly owned by Te Rūnanga;

19.1.2 the Ngāi Tahu Charitable Trust; and

19.1.3 any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust,

to take a transfer of the Specified Shares which are to be transferred to Te Rūnanga in accordance with this Deed.

19.2 Time Limit for Notice

Any notice given by Te Rūnanga to the Crown Shareholder under this *clause 19* shall be given not later than 10 Business Days before the date on which the Specified Shares are to be transferred to Te Rūnanga.

19.3 Conditions of Nomination

Any nomination by Te Rūnanga under this *clause 19* will be subject to the following conditions:

19.3.1 Te Rūnanga shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Shareholder with the notice given under this *clause 19*;

19.3.2 the nominee will be bound by all the terms and conditions on which the Specified Shares are to be transferred, and entitled to the benefit of the Crown Shareholder's obligations to Te Rūnanga in respect of the Specified Shares (in both cases, with any amendments as may be reasonably required by the Crown Shareholder to ensure the Crown Shareholder is not made worse off by virtue of the nomination); and

19.3.3 Te Rūnanga will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Specified Shares.

20 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Shareholder and Te Rūnanga under this Deed. However, such time limits may be extended if the Crown Shareholder and Te Rūnanga agree in writing to do so.

21 NOT OBLIGED TO TRANSFER A LESSER NUMBER

Nothing in this Deed shall require the Crown Shareholder to transfer less than the number of Specified Shares.

22 CHANGES TO SPECIFIED SHARES**22.1 Subdivision or Consolidation**

In the event of a subdivision or consolidation of the Specified Shares, this Deed shall apply to the subdivided or consolidated shares.

22.2 Bonus Issue

In the event that a bonus issue of shares is made in respect of the Specified Shares, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the bonus issue.

22.3 Cash Issue

In the event that the Company makes a pro rata cash issue to its shareholders, this Deed shall apply to the Specified Shares and the shares issued in respect of the Specified Shares pursuant to the cash issue.

23 NOTICES**23.1 Written Notice**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

Crown Shareholder:

[Details to come]

Facsimile:

Te Rūnanga o Ngāi Tahu:

The Secretary
Te Rūnanga o Ngāi Tahu
Te Waipounamu House
127 Armagh Street
(PO Box 13 046)
CHRISTCHURCH

Facsimile: 03 365 4424

23.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

23.3 Delivered Notice

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

23.4 Posted Notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

23.5 Facsimile Notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

24 TERMINATION

The obligation of the Crown Owner under this Deed in respect of the Specified Shares shall terminate on a Disposal of the Specified Shares:

24.1 to Te Rūnanga; or

24.2 in accordance with *clauses 2.2, 10.1, 12.3.1, 13.1 or 13.3.*

25 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

26 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above

[Execution clauses to follow]

APPENDIX
NOMINATION DEED
(Clause 19)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[CROWN SHAREHOLDER]** *(the Crown Shareholder)*
- (3) **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

BACKGROUND

- A The Crown Shareholder and Te Rūnanga are parties to a Deed of Grant of Right of First Refusal dated [].
- B Te Rūnanga has nominated the Nominee to take a transfer of the Specified Shares as permitted under the RFR Deed.
- C As required by clause 19 of the RFR Deed, the Nominee covenants with the Crown Shareholder as set out in this Deed.

NOW THE NOMINEE AGREES with the Crown Shareholder and Te Rūnanga as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Specified Shares means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

2 NOMINEE'S COVENANT

The Nominee covenants with each of Te Rūnanga and the Crown Shareholder that it will observe and perform the obligations of Te Rūnanga under the RFR Deed and any agreement between the Crown Shareholder and Te Rūnanga in respect of the Specified Shares and will be bound by the terms of the RFR Deed and such agreement, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and Te Rūnanga warrant to the Crown Shareholder that the Nominee is [directly/indirectly] wholly-owned by [Te Rūnanga/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above.

[Execution provisions]

ATTACHMENT 9.8
DEED OF GRANT OF RIGHT OF FIRST REFUSAL - CROWN
FORESTRY ASSETS
(Clause 9.8)

Date:

BETWEEN

- (1) **TE RŪNANGA O NGĀI TAHU** (*Te Rūnanga*)
- (2) **HER MAJESTY THE QUEEN** in right of New Zealand, acting by and through
 [] (*the Crown*)

BACKGROUND

- A Te Rūnanga and the Crown are parties to a Deed of Settlement dated []
 1997.
- B Pursuant to the Deed of Settlement, the Crown agreed to enter into a deed granting
 to Te Rūnanga a right of first refusal whenever the Crown intends to Dispose of a
 Crown Forestry Asset.
- C This Deed is entered into in satisfaction of the obligation of the Crown referred to
 in *Recital B*.

NOW THEREFORE the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Assessor means an independent third party appointed for the purposes of *clause 9*;

Attempt to Dispose of, in relation to a Crown Forestry Asset, means:

- (a) to make an offer to Dispose of a Crown Forestry Asset to any person;
- (b) to encourage or invite from any person, an offer to take, or an expression of
 interest in taking, a Disposal of a Crown Forestry Asset; or

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DEED OF GRANT OR RIGHT OF FIRST REFUSAL - CROWN FORESTRY ASSETS

- (c) to make a counter-offer to, or to negotiate with, a person about an offer made by a person in relation to a Disposal of a Crown Forestry Asset;

Benchmark Offer means

- (a) the Disposal Offer; or
- (b) any written offer to take a Disposal of a Crown Forestry Asset subsequently made by Te Rūnanga in the period referred to in *clause 4.1* which, if accepted by the Crown Owner, would be an agreement to Dispose of a Crown Forestry Asset, (or, where Te Rūnanga has made more than one such written offer in that period, the last such written offer),

whichever is on More Favourable Terms;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Change of Control, in relation to the New Crown Owner, means any act or omission by a Crown Body which has the result that a person other than a Crown Body has Effective Control of the New Crown Owner but does not include a Permitted Change of Control. For the avoidance of doubt, any change in the political party or parties constituting the New Zealand Government shall not amount to a Change of Control of any New Crown Owner;

Crown Body means the Crown (whether acting through a Minister or otherwise) or a Crown Entity (as defined in the Public Finance Act 1989) or a State Enterprise (as defined in the State-Owned Enterprises Act 1986) or any company which is wholly-owned by a Crown Entity or State Enterprise;

Crown Forestry Asset means:

- (a) the seller's interest in a contract of a kind referred to in paragraph (a) or (b) of the definition of *Dispose of*;
- (b) a Crown Forestry Right; or
- (c) a Ngāi Tahu Forestry Right.

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Crown Forestry Right means any right (including, without limitation, sublicences) granted, or to be granted, by the Crown Owner for a term (including rights of renewal or of extension) of 3 years or longer to any other person to:

- (a) establish (including replant), maintain and/or harvest; or
- (b) maintain and/or harvest,

a crop of trees on any part of the land described in paragraph 4 of Attachment 7.1 to the Deed of Settlement which was not acquired by Te Rūnanga pursuant to the Deed of Settlement but does not, for the avoidance of doubt, include a sale of standing trees or logs;

Crown Owner means the Crown or any Crown Body which has taken a Disposal of a Crown Forestry Asset under *clause 2.2.1*;

Deed of Settlement means the deed referred to in *Recital A*;

Dispose of, in relation to a Crown Forestry Asset, means:

- (a) to sell, from any part of the land described in paragraph 4 of Attachment 7.1 to the Deed of Settlement which was not acquired by Te Rūnanga pursuant to Sections 7 or 8 of the Deed of Settlement, standing trees or logs where, subject to item (b) of this definition, the term of the contract, including rights of renewals or of extensions is, or could be, for 3 years or longer;
- (b) to sell, from any part of any land subject to a Ngāi Tahu Forestry Right, standing trees or logs (no matter the length of the term of the contract) during the last 3 years of the term of the Ngāi Tahu Forestry Right;
- (c) to grant a Crown Forestry Right;
- (d) to assign in whole or in part a Crown Forestry Right where, subject to item (f) of this definition, the unexpired term of the right, including rights of renewals or of extensions is, or could be, for 3 years or longer;
- (e) to assign in whole or in part a Ngāi Tahu Forestry Right where, subject to item (f) of this definition, the unexpired term of the right, including rights of renewals or of extensions is, or could be, for 3 years or longer; or
- (f) to assign in whole or in part a Crown Forestry Right or a Ngāi Tahu Forestry Right at any time during the last three years of the current term;

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Disposal Notice means a notice of the Crown Owner's intention to Dispose of a Crown Forestry Asset given under *clause 3.1*;

Disposal Offer means an offer to Dispose of a Crown Forestry Asset to Te Rūnanga complying with *clause 3.2*;

Effective Control, in relation to the New Crown Owner means:

- (a) the legal and beneficial, or beneficial, ownership and/or direct or indirect control by any person of any of the shares in the capital of the New Crown Owner or of any holding company of the New Crown Owner which:
 - (i) amount to more than 50 percent of the issued shares of the New Crown Owner (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital);
 - (ii) enable that person to exercise, or control the exercise of, more than 50 percent of the maximum number of votes that can be exercised at a general meeting of the New Crown Owner;
 - (iii) enable that person to control the composition of the board of directors of the New Crown Owner; or
 - (iv) entitle that person to receive more than 50 percent of every dividend paid on shares issued by the New Crown Owner, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the power to govern the financial and operating policies of the New Crown Owner for the purpose of obtaining the benefits and/or the risks normally associated with ownership;

Holding Company has the meaning given to it in the Companies Act 1993;

More Favourable Terms has the meaning given to it in *clause 1.2*;

New Crown Owner means a Crown Body which is a Subsidiary of a Crown Owner or a Subsidiary of a Crown Owner's Holding Company to which the Crown Owner has Disposed of a Crown Forestry Asset pursuant to *clause 2.2.1*;

Ngāi Tahu Charitable Trust means the charitable trust known as the Ngāi Tahu Charitable Trust, established by a trust deed dated 23 March 1994;

Ngāi Tahu Forestry Right means a Forestry Right as defined in clause 7.1 of the Deed of Settlement granted by Te Rūnanga to the Crown, or reserved by the Crown, in accordance with the Deed of Settlement;

Ngāi Tahu Participant means Te Rūnanga or any party associated with Te Rūnanga or any consortium in which Te Rūnanga or any party associated with Te Rūnanga is a participant;

Permitted Change of Control means Change of Control of a Crown Owner or of any holding company of a Crown Owner where Te Rūnanga has given its prior written approval to the Change of Control;

Subsidiary has the meaning given to it in the Companies Act 1993.

1.2 Meaning of More Favourable Terms

A reference to any Disposal terms, contract or offer (the “first-mentioned offer”) being on More Favourable Terms than any other Disposal terms, contract or offer (the “second-mentioned offer”) means that the terms and conditions (including price) of the first-mentioned offer are, taken as a package, more favourable from a purchaser’s point of view than the terms and conditions (including price) of the second-mentioned offer, taken as a package.

1.3 Interpretation

In the interpretation of this Deed, unless the context requires otherwise:

- 1.3.1 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
- 1.3.2 words or phrases (other than proper names) appearing in this Deed with capitalised initial letters are defined terms and bear the meanings given to them in this Deed;
- 1.3.3 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- 1.3.4 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.3.5 a reference to a party to this Deed or any other document or agreement includes that party’s successors, heirs, executors and assigns;

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- 1.3.6 a reference to a *person* includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 1.3.7 references to Recitals and clauses are to Recitals and clauses of this Deed;
- 1.3.8 references to *written* or *in writing* include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form; and
- 1.3.9 a reference to a date on which something shall be done includes any other date which may be agreed in writing between Te Rūnanga and the Crown Owner.

2 OPERATION OF RIGHT OF FIRST REFUSAL PROVISIONS

2.1 Disposal subject to rights of first refusal

Subject to *clause 2.2*, no Crown Owner shall Dispose of a Crown Forestry Asset or Attempt to Dispose of a Crown Forestry Asset until the Crown Owner has complied with the requirements in this Deed.

2.2 Exceptions

The requirements in this Deed do not apply to the Attempted Disposal of, or the Disposal of, a Crown Forestry Asset by a Crown Owner to:

- 2.2.1 a Crown Body, so long as the Disposal of a Crown Forestry Asset is made subject to the terms of this Deed and the Crown Body to whom the Disposal of a Crown Forestry Asset is made, first enters into a deed of covenant at the Crown Owner's expense in favour of Te Rūnanga to that effect;
- 2.2.2 any person, if both the person to whom the Disposal of a Crown Forestry Asset is to be made and the Disposal is first approved in writing by Te Rūnanga; or
- 2.2.3 any person where Te Rūnanga has waived its rights under this Deed by notice to the Crown Owner.

3 DISPOSAL NOTICE

3.1 Crown Owner shall give Disposal Notice

If the Crown Owner decides to Dispose of a Crown Forestry Asset, then, unless *clause 2.2* applies or this Deed otherwise permits the Crown Owner to Dispose of

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a Crown Forestry Asset without compliance with this clause, the Crown Owner shall give a Disposal Notice to Te Rūnanga. The Disposal Notice shall:

- (a) be in writing; and
- (b) have a Disposal Offer attached to it.

3.2 Contents of Disposal Offer

The Disposal Offer shall:

- 3.2.1 comprise an offer by the Crown Owner to Te Rūnanga to Dispose of a Crown Forestry Asset to Te Rūnanga, which shall be capable of acceptance by Te Rūnanga upon receipt; and
- 3.2.2 set out all the terms and conditions of the proposed Disposal, including the price.

4 NEGOTIATION

4.1 Negotiation

During the period of 3 months commencing on the date Te Rūnanga receives a Disposal Notice, the Crown Owner and Te Rūnanga shall, through their respective representatives, negotiate in good faith to attempt to conclude an agreement for the Disposal of a Crown Forestry Asset referred to in the Disposal Offer to Te Rūnanga.

4.2 Obligations not implied

The agreement of the parties to negotiate in good faith referred to in *clause 4.1*:

4.2.1 shall not be taken as implying an obligation on:

- (a) Te Rūnanga to accept the Disposal Offer or any other offer made to it during the negotiations referred to in *clause 4.1*; or
- (b) the Crown Owner to accept any offer made to it during the negotiations referred to in *clause 4.1*; and

4.2.2 shall not require the Crown Owner or Te Rūnanga to act in a manner which is inconsistent with, respectively, its own commercial interests.

4.3 No obligation to make offer

Nothing in this Deed imposes an obligation on Te Rūnanga to make a counter-offer to the Crown Owner in response to a Disposal Offer.

5 ACCEPTANCE OF DISPOSAL OFFER

- 5.1 If Te Rūnanga accepts the Disposal Offer or the Crown Owner and Te Rūnanga otherwise enter into an agreement for the Disposal of a Crown Forestry Asset referred to in the Disposal Offer before or at 5.00 pm on the date of expiry of the period referred to in *clause 4.1*, the Disposal of a Crown Forestry Asset shall (subject to any conditions in such agreement) be completed in accordance with that agreement.
- 5.2 Any acceptance of the Disposal Offer shall be effected by Te Rūnanga giving notice to the Crown Owner. Such notice shall include a statement that the acceptance of the Disposal Offer is unconditional or subject only to any conditions referred to in the Disposal Offer.

6 NON-ACCEPTANCE OF OFFER

If:

- 6.1 Te Rūnanga does not accept the Disposal Offer, or the Crown Owner and Te Rūnanga do not otherwise enter into an agreement for a Disposal of a Crown Forestry Asset referred to in the Disposal Offer before or at 5.00 pm on the date of expiry of the period referred to in *clause 4.1*; or
- 6.2 Te Rūnanga gives notice to the Crown Owner that it declines the Disposal Offer before or at that time,

the Disposal Offer will lapse at the earlier of:

- 6.3 the time at which Te Rūnanga gave notice declining the Disposal Offer; and
- 6.4 5.00 pm on the date of expiry of the period referred to in *clause 4.1*.

7 CONSEQUENCES OF LAPSE OF OFFER

7.1 When Disposal may take place

If the Disposal Offer lapses in accordance with *clause 6*, then:

- 7.1.1 the Crown Owner will be free to Attempt to Dispose of, and to Dispose of, a Crown Forestry Asset referred to in the Disposal Offer to any person so long as the relevant Disposal is not on More Favourable Terms than the Benchmark Offer and so long as the contract for the Disposal of a Crown Forestry Asset is executed within 9 months after the date on which the Disposal Offer has lapsed; but

7.1.2 the Crown Owner may not Dispose of a Crown Forestry Asset referred to in the lapsed Disposal Offer:

- (a) during the 9 month period referred to in *clause 7.1.1* on More Favourable Terms than the Benchmark Offer; or
- (b) after the expiry of that 9 month period,

without again complying with this Deed in full.

7.2 No more information to third parties

In Attempting to Dispose of, or in Disposing of, a Crown Forestry Asset, the Crown shall provide no more information, or no more access to information, to any other person than that which it has already provided to Te Rūnanga.

8 NOTICE OF TERMS

8.1 Notice of Disposal to third party

If the Crown Owner wishes to Dispose of a Crown Forestry Asset pursuant to *clause 7.1.1*, it shall give notice to Te Rūnanga of its intention to do so. Such notice shall:

- 8.1.1 specify the date or proposed date of execution of the contract relating to the proposed Disposal and, in the case of a contract which has been executed or will be executed within 20 Business Days of the date of the notice, specify the date on which the contract will cease to be conditional upon the Crown Owner's compliance with this Deed;
- 8.1.2 subject to *clause 8.2*, set out the terms and conditions (including price);
- 8.1.3 contain a statement that the proposed Disposal would not be on More Favourable Terms than the Benchmark Offer; and
- 8.1.4 be given to Te Rūnanga not less than 20 Business Days before the later of:
 - (a) the proposed date of execution of the contract relating to the proposed Disposal; and
 - (b) the date on which the contract relating to the proposed Disposal will cease to be conditional upon the Crown Owner's compliance with this Deed.

8.2 Non-disclosure of terms

- 8.2.1 The Crown Owner may omit any of the terms and conditions of a contract or proposed contract so long as they are not material to Te Rūnanga's evaluation of those terms and conditions and comparison of them with the terms and conditions of the Benchmark Offer.
- 8.2.2 If the Crown Owner exercises its rights under *clause 8.2.1* it shall give notice to that effect to Te Rūnanga at the same time as it gives notice under *clause 8.1*. Such notice shall specify the nature of the terms and conditions omitted from the notice given under *clause 8.1*.
- 8.2.3 Te Rūnanga may by notice in writing to the Crown Owner, which shall be given not more than 3 Business Days after the Crown Owner has given the notice referred to in *clause 8.2.2*, require that the Crown Owner refers to an Assessor the issue as to whether the terms and conditions omitted by the Crown Owner are material.
- 8.2.4 If Te Rūnanga gives a notice under *clause 8.2.3*, its notice shall include the name of the person whom it proposes should be the Assessor and the Assessor shall be appointed in the manner described in *clauses 9.1.3* and *9.1.4*, and *clause 9.2* will apply with any necessary modifications.
- 8.2.5 If the Assessor determines that any of the terms and conditions omitted by the Crown Owner are material, the Crown Owner shall disclose those terms and conditions to Te Rūnanga forthwith, and the fees and costs of the Assessor shall be borne by the Crown Owner. Otherwise, the fees and costs of the Assessor shall be borne by Te Rūnanga.

9 REFERENCE TO ASSESSOR

9.1 Appointment of Assessor

- 9.1.1 If requested by Te Rūnanga within 5 Business Days after the notice referred to in *clause 8.1* has been given to Te Rūnanga, the Crown Owner will refer to an Assessor the issue as to whether the Disposal would be on More Favourable Terms than the Benchmark Offer. If there is any dispute as to which offer is the Benchmark Offer, that issue may also be determined by the Assessor.
- 9.1.2 Subject to *clause 9.6*, Te Rūnanga's request under *clause 9.1.1* shall be made by giving notice to the Crown Owner of the request, and such notice shall include the name of the person whom Te Rūnanga proposes should be the Assessor.

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- 9.1.3 If the Crown Owner accepts the person whom Te Rūnanga proposes should be the Assessor or the Crown Owner and Te Rūnanga agree on an alternative, the Crown Owner will forthwith appoint the person proposed by Te Rūnanga or the agreed alternative, as the case may be, as Assessor.
- 9.1.4 If the Crown Owner does not wish that the person proposed by Te Rūnanga be appointed as Assessor, and Te Rūnanga and the Crown Owner cannot agree on an alternative within 3 Business Days after Te Rūnanga's notice has been given to the Crown Owner, then:
- (a) if the Crown Owner and Te Rūnanga agree on a third party who should be asked to appoint the Assessor, the Crown Owner shall arrange for the appointment of the Assessor by that third party; or
 - (b) if the Crown Owner and Te Rūnanga have not agreed on a third party who should be asked to appoint the Assessor, the Crown Owner shall arrange for the appointment of the Assessor by the President for the time being of the Institute of Chartered Accountants of New Zealand or his or her nominee.

9.2 Appointment and conduct of Assessor

- 9.2.1 The terms of appointment of the Assessor shall include requirements that:
- (a) the Assessor determines the matter within 5 Business Days after the date of his or her appointment;
 - (b) the Assessor will immediately notify the parties of his or her determination; and
 - (c) the Assessor will keep all confidential information provided to him or her by the Crown Owner or Te Rūnanga confidential.
- 9.2.2 The Crown Owner shall provide to the Assessor a copy of the Benchmark Offer and the terms and conditions (including price) of the proposed Disposal and such other evidence as is necessary to determine the issue.
- 9.2.3 The Assessor shall provide an opportunity to each party to make submissions on the issue or issues being considered by the Assessor, so long as this does not have the effect of, in the Assessor's opinion, extending the 5 Business Day period referred to above.

9.3 Assessor's determination

If:

9.3.1 the Assessor determines that the Disposal would not be on More Favourable Terms than the Benchmark Offer, then *clause 7.1.1* shall apply, and the 9 month period referred to in *clause 7* shall be deemed to end on the later of the end of that 9 month period and the date which is 20 Business Days after the date of the Assessor's determination; or

9.3.2 the Assessor determines that the Disposal would be on More Favourable Terms than the Benchmark Offer, then *clause 10.2* shall apply.

9.4 Costs of Assessor

The fees and costs of the Assessor shall be borne by Te Rūnanga if the Assessor makes a determination under *clause 9.3.1* and shall be borne by the Crown Owner if the Assessor makes a determination under *clause 9.3.2*.

9.5 Binding decision

Both the Crown Owner and Te Rūnanga agree that the determination of the Assessor will be final and binding on both of them and that paragraphs 4 and 5 of the Second Schedule to the Arbitration Act 1996 do not apply to the Assessor's determination.

9.6 Appointment of Assessor

The Crown Owner or Te Rūnanga may, at any time after the date of receipt by Te Rūnanga of a Disposal Notice, require, by notice to the other of them, the appointment of an Assessor in anticipation of a possible future reference to an Assessor under *clause 9.1*. In that event, the provisions of *clause 9.1* relating to the appointment of an Assessor will apply with all necessary modifications, and any reference under *clause 9.1* which occurs within 6 months after the appointment of an Assessor under this *clause 9.6* will be a reference to the Assessor appointed under this *clause 9.6* unless, before the date of the reference, either party has given notice to the other withdrawing its approval of that person as an Assessor. Each party agrees it will not give such a notice unless the party believes, on reasonable grounds, that either:

9.6.1 circumstances have changed to such an extent since the time of the appointment of the person appointed under this *clause 9.6* that; or

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9.6.2 new information has become available since that time which indicates that,

such person is no longer the appropriate person to be the Assessor.

10 DISPOSAL OF A CROWN FORESTRY ASSET TO PARTY OTHER THAN TE RŪNANGA

10.1 Disposal to third party

If:

10.1.1 within 5 Business Days after the notice referred to in *clause 8.1* has been given to Te Rūnanga, Te Rūnanga has not made a request under *clause 9.1*; or

10.1.2 the Assessor has made a determination under *clause 9.3.1*,

then the Crown Owner may Dispose of a Crown Forestry Asset on the terms referred to in the notice given under *clause 8.1*.

10.2 Notice to acquire

If the Assessor makes a determination under *clause 9.3.2*, Te Rūnanga may, at any time within 5 Business Days after the Assessor has given notice to Te Rūnanga of such determination, give a notice to the Crown Owner stating that it wishes to enter into an agreement to the Disposal of a Crown Forestry Asset on the terms (including price) referred to in the notice given under *clause 8.1*. If Te Rūnanga gives such a notice, then the Crown Owner shall be deemed to have entered into a contract with Te Rūnanga on the terms referred to in the notice given under *clause 8.1*. Te Runanga will then be bound unconditionally (or subject only to any conditions referred to in the notice given under *clause 8.1*) to accept the Disposal of a Crown Forestry Asset on such terms.

10.3 Disposal of a Crown Forestry Asset if Te Rūnanga does not wish to acquire it

If the Assessor makes a determination under *clause 9.3.2*, but Te Rūnanga does not give a notice under *clause 10.2*, then the Crown Owner may Dispose of a Crown Forestry Asset on the terms referred to in the notice given under *clause 8.1*.

11 WITHDRAWAL BY CROWN OWNER

Except as provided in *clause 12*, nothing in this Deed shall prevent the Crown Owner from withdrawing a Disposal Notice at any time before acceptance by Te Rūnanga of a Disposal Offer. However, if it does so, it shall comply in full with this Deed if it decides to Attempt to Dispose of a Relevant Crown Forestry Asset referred to in the Disposal Offer again.

12 CHANGE OF CONTROL OF NEW CROWN OWNER

12.1 Notice requirement where there is Change of Control

If:

12.1.1 a Disposal of a Crown Forestry Asset to a New Crown Owner occurs;
and

12.1.2 a Change of Control of the New Crown Owner occurs during the period
of one year commencing on the date of the Disposal,

then, on becoming aware of that Change of Control, the New Crown Owner shall
immediately give Te Rūnanga:

12.1.3 notice of the Change of Control; and

12.1.4 an irrevocable Disposal Offer of all the assets contained in the Disposal
referred to in *clause 10.1.1* on such terms and conditions (including
price) to be determined under *clause 12.5*.

12.2 Consequence of failure to give Disposal Notice

If the New Crown Owner defaults in giving a notice of the Change of Control or a
Disposal Offer under *clause 12.1*, Te Rūnanga, acting on behalf of the New
Crown Owner, no later than 20 Business Days after the date on which Te Rūnanga
became aware of the Change of Control, may prepare a Disposal Offer and give a
copy to the New Crown Owner, which offers a Disposal of a kind referred to in
clause 12.1.4 to Te Rūnanga. Such a Disposal Offer prepared by Te Rūnanga
shall be unconditional and shall be for all of the assets contained in the Disposal
referred to in *clause 12.1.1* on terms and conditions (including price) to be
determined under *clause 12.5*.

12.3 Deemed approval

If Te Rūnanga fails to prepare a Disposal Offer and give a copy to the New Crown
Owner within the time limit specified in *clause 12.2* it will be deemed to have
given its written approval to the Change of Control under the definition of
Permitted Change of Control in *clause 1*.

12.4 Negotiation

Clause 7 will apply as if references in that clause to the period referred to in
clause 4 were the period between the date of receipt by the New Crown Owner or
Te Rūnanga of a Disposal Offer made under *clause 12.1* and *clause 12.2* (as the
case may be) and the date on which the New Crown Owner and Te Rūnanga agree

on the terms and conditions (including price) under *clause 12.1* or Te Rūnanga refers the matter to arbitration under *clause 12.5.2(a)*.

12.5 Disposal of a Crown Forestry Asset

- 12.5.1 If the New Crown Owner and Te Rūnanga agree on all terms and conditions (including price) within 40 Business Days of the date on which Te Rūnanga received the notice and Disposal Offer under *clause 12.1*, or gave a copy of a Disposal Offer to the New Crown Owner under *clause 12.2*, then the New Crown Owner shall, subject to the satisfaction of any conditions referred to in the agreed terms and conditions, effect the Disposal of a Crown Forestry Asset to Te Rūnanga on such terms and conditions.
- 12.5.2 If the New Crown Owner and Te Rūnanga cannot so agree on all terms and conditions (including price) by the end of the 40 Business Day period referred to in *clause 12.5.1*, then:
- (a) within a further period of 5 Business Days, Te Rūnanga may refer any matter which is not agreed to arbitration in accordance with *clause 13*; and
 - (b) once the terms and conditions (including price) have been determined by arbitration, Te Rūnanga shall, if it wishes to accept the Disposal Offer, give notice to the New Crown Owner of its acceptance of the Disposal Offer on those terms and conditions and at that price by the date which is 5 Business Days after notice of the determination of the arbitrator has been given to Te Rūnanga.
- 12.5.3 If Te Rūnanga gives such a notice of acceptance to the New Crown Owner, the New Crown Owner shall, subject to the satisfaction of any conditions referred to in such terms and conditions, effect the Disposal of a Crown Forestry Asset to Te Rūnanga in accordance with those terms and conditions (including price).
- 12.5.4 If:
- (a) at the end of the 5 Business Day period referred to in *clause 12.5.2(a)*, the New Crown Owner and Te Rūnanga have not agreed on all terms and conditions (including price) under *clause 12.5.1* and Te Rūnanga has not referred the matter to arbitration under *clause 12.5.2(a)*; or

- (b) at the end of the 5 Business Day period referred to in *clause 12.5.2(b)*,
Te Rūnanga has not notified acceptance under *clause 12.5.2(b)*,

Te Rūnanga will be deemed to have given its written approval to the Change of Control under the definition of Permitted Change of Control in *clause 1*. In that event, the requirements of this Deed will apply to any future Attempt to Dispose of, or Disposal of the relevant Crown Forestry Asset by the New Crown Owner.

13 ARBITRATION

13.1 Reference to arbitration

If Te Rūnanga and the New Crown Owner cannot agree on all terms and conditions (including price) for the Disposal Offer given under *clause 12.1* or *clause 12.2* and the matters which are not agreed is referred to arbitration under *clause 12.5.2(a)*, then the arbitration shall be conducted in accordance with the Arbitration Act 1996. Te Rūnanga may commence the arbitration by giving a notice to the New Crown Owner.

13.2 Conduct of arbitration

The arbitration shall be conducted by one arbitrator, if the New Crown Owner and Te Rūnanga can agree upon one or, failing agreement, by two arbitrators, one to be appointed by the New Crown Owner and one to be appointed by Te Rūnanga. If the reference is to two arbitrators, those arbitrators shall appoint a third arbitrator before they begin to consider the dispute.

13.3 Terms of appointment

The terms of appointment of the arbitrator or arbitrators shall include requirements that:

- 13.3.1 the determination shall be in the form of a written contract for the Disposal of a Crown Forestry Asset incorporating all those terms and conditions, if any, (including price) which have already been agreed by the parties and all such other terms and conditions (including price) which would have been agreed by a willing seller with a willing buyer, each with equal bargaining strength and neither having the ability to impose terms on the other;
- 13.3.2 the determination is made within 30 Business Days after the appointment of the arbitrator or arbitrators;
- 13.3.3 the arbitrator or arbitrators shall immediately notify the parties of his, her or their determination; and

13.3.4 the arbitrator or arbitrators will keep all confidential information provided to him, her or them in the course of the arbitration confidential.

13.4 Parties bound by award

Te Rūnanga and the New Crown Owner agree to be bound by the award in the arbitration. Nothing in this *clause 13.4* affects the rights of Te Rūnanga under *clause 12.5.2(b)*.

14 PARTICIPATION IN SALES PROCESS

14.1 Ngāi Tahu Participant may participate in sales process

Nothing in this Deed prevents any Ngāi Tahu Participant participating in any sales process relating to any Disposal of a Crown Forestry Asset independently of the right of first refusal granted by this Deed.

14.2 Notice

Te Rūnanga shall give notice to the Crown Owner if any Ngāi Tahu Participant intends to participate in any such sales process. If the Crown Owner believes a participant in any such sales process is a Ngāi Tahu Participant, it may give notice to that effect to Te Rūnanga and Te Rūnanga shall, within 5 Business Days of receipt of such notice, give a notice under this clause or advise the Crown Owner that the participant is not a Ngāi Tahu Participant. If no such notice is given, the Crown Owner may treat the participant as a Ngāi Tahu Participant until it receives a notice from Te Rūnanga advising that the participant is not a Ngāi Tahu Participant.

14.3 Modification of right of first refusal

If a Ngāi Tahu Participant in respect of which a notice has been given under *clause 14.2* participates in such a sales process, then the Crown Owner may enter into a contract to Dispose of a Crown Forestry Asset to which the sales process related to the Ngāi Tahu Participant without further compliance with this Deed. However, if such contract does not proceed to settlement for any reason other than default by the Ngāi Tahu Participant, the requirements of this Deed will apply to any future Disposal of, or Attempted Disposal of, a Crown Forestry Asset to which the sales process related.

15 NO PREJUDICE

If the Crown Owner wishes to Dispose of a Crown Forestry Asset pursuant to *clause 7.1* after a sales process in which a Ngāi Tahu Participant has participated, the fact that the Ngāi Tahu Participant has participated in the sales process will not prejudice or affect the Crown Owner's obligations under this Deed except as provided in *clause 14*.

16 NOMINATION

16.1 Te Rūnanga may nominate

Te Rūnanga may nominate any of:

16.1.1 any company or other entity which is directly or indirectly wholly owned by Te Rūnanga;

16.1.2 the Ngāi Tahu Charitable Trust; or

16.1.3 any company or entity which is directly or indirectly wholly owned by the Ngāi Tahu Charitable Trust,

to take a Disposal of a Crown Forestry Asset which is to be taken by Te Rūnanga in accordance with this Deed.

16.2 Time limit for notice

Any notice given by Te Rūnanga to the Crown Owner under this *clause 16* shall be given not later than 10 Business Days before the date on which the Disposal of a Crown Forestry Asset is to be taken by Te Rūnanga.

16.3 Conditions of nomination

Any nomination by Te Rūnanga under this *clause 16* will be subject to the following conditions:

16.3.1 Te Rūnanga shall procure that the nominee executes a nomination deed in the form specified in the *Appendix* and deliver the executed deed to the Crown Owner with the notice given under this *clause 16*;

16.3.2 the nominee will be bound by all the terms and conditions on which the Disposal is to be effected, and entitled to the benefit of the Crown Owner's obligations to Te Rūnanga in respect of the Disposal (in both cases, with any amendments as may be reasonably required by the Crown Owner to ensure the Crown Owner is not made worse off by virtue of the nomination); and

16.3.3 Te Rūnanga will, notwithstanding such nomination, remain liable for the performance of its obligations under this Deed and any agreement relating to the Disposal of a Crown Forestry Asset.

RJR
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17 TIME LIMITS

Time is of the essence for all time limits imposed on the Crown Owner and Te Rūnanga under this Deed. However, such time limits may be extended if the Crown Owner and Te Rūnanga agree in writing to do so.

18 NOTICES**18.1 Written notice**

Except as expressly provided in this Deed, any notice or other communication given under this Deed to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they will be as follows:

Crown Owner:

[Details to come]

Te Rūnanga o Ngāi Tahu:

The Secretary
Te Rūnanga o Ngāi Tahu
Te Waipounamu House
127 Armagh Street
(PO Box 13 046)
CHRISTCHURCH

Facsimile:

Facsimile: 03 365 4424

18.2 Delivery

Delivery may be effected by hand, by post with postage prepaid, or by facsimile.

18.3 Delivered notice

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

18.4 Posted notice

A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.

18.5 Facsimile notice

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

19 TERMINATION

The obligation of the Crown Owner under this Deed in respect of any Crown Forestry Asset shall terminate on a Disposal of the Crown Forestry Asset:

19.1 to Te Rūnanga; or

19.2 in accordance with *clauses 2.2, 7.1.1, 9.3.1, 10.1 or 10.3.*

20 NO ASSIGNMENT

Subject to *clause 2.2.1*, neither party may transfer or assign any rights or obligations in this Deed.

21 AMENDMENT

No amendment to this Deed will be effective unless it is in writing and signed on behalf of both parties.

EXECUTED as a deed on the date first written above

[Execution clauses to follow]

APPENDIX
NOMINATION DEED
(Clause 16)

Date:

PARTIES

- (1) *[Name of nominee] (the Nominee)*
- (2) **[CROWN OWNER]** *(the Crown Owner)*
- (3) **TE RŪNANGA O NGĀI TAHU** *(Te Rūnanga)*

BACKGROUND

- A The Crown Owner and Te Rūnanga are parties to a Deed of Grant of Right of First Refusal dated [].
- B Te Rūnanga has nominated the Nominee to take a Disposal of a Crown Forestry Asset, as permitted under the RFR Deed.
- C As required by clause 16 of the RFR Deed, the Nominee covenants with the Crown Owner as set out in this Deed.

NOW THE NOMINEE AGREES with the Crown Owner as follows:

1 INTERPRETATION

- 1.1 In this Deed, unless the context requires otherwise:

RFR Deed means the deed referred to in *Recital A*;

the Disposal means *[details to be inserted]*.

- 1.2 Terms defined in the RFR Deed have the same meanings in this Deed, unless the context requires otherwise.
- 1.3 The rules of interpretation set out in clause 1.3 of the RFR Deed apply in the interpretation of this Deed, unless the context requires otherwise.

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2 NOMINEE'S COVENANT

The Nominee covenants with each of Te Rūnanga and the Crown Owner that it will observe and perform the obligations of Te Rūnanga under the RFR Deed in respect of the Disposal and will be bound by the terms of the RFR Deed and any agreement relating to such Disposal, as if it had executed them.

3 NOTICES

Any notice to the Nominee may be given in the same manner as is specified in the RFR Deed. The Nominee's address for notices is: *[Details to be inserted]*

4 WARRANTY

The Nominee and Te Rūnanga warrant to the Crown Owner that the Nominee is [directly/indirectly] wholly-owned by [Te Rūnanga/the Ngāi Tahu Charitable Trust].

EXECUTED as a deed on the date first written above.

[Execution provisions]