

Crown Participation Agreement

relating to dividend reinvestment plans and buy-backs of shares

PARTIES

The Sovereign in right of New Zealand acting by and through the
Minister of Finance

Crown

Air New Zealand Limited

Company

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AGREEMENT dated

2017

PARTIES

The Sovereign in right of New Zealand acting by and through the Minister of Finance

("Crown")

Air New Zealand Limited

("Company")

INTRODUCTION

- A. The Company may, from time-to-time, establish a DRP to enable its shareholders to reinvest all or part of Dividends paid on Shares in additional Shares, instead of receiving that Dividend in cash, for those Dividends in respect of which the DRP is operating. In addition, the Company may, from time-to-time, return capital to its shareholders by way of a buy-back of Shares.
- B. The Crown, the Company's major shareholder, has advised the Company that, during the Term, while retaining at least its majority shareholding of 51% in the Company:
- (i) it will participate in any DRP; and
 - (ii) it wishes to have the option to participate in any Buy-Back,
- in both cases only to the extent required to maintain the Crown's proportionate Shareholding following the DRP or Buy-Back.
- C. In order to achieve these objectives, to ensure a procedure that is fair and equitable to all shareholders and the Company, and in consideration of the agreements each party gives to the other under this agreement, the parties have agreed to enter into this agreement to record the terms applying to any DRP or Buy-Back announced by the Company and taking place during the Term.

AGREEMENT**1. INTERPRETATION**

- 1.1 **Definitions:** In this agreement, unless the context otherwise requires:

"**Business Day**" has the meaning given to that term in the NZX Listing Rules.

"**Buy-Back**" means any buy-back of Shares by the Company, except for an on-market buy-back for the sole purpose of acquiring Shares to be held as treasury stock for subsequent issue to employees under one or more incentive plans adopted by the Company.

"**Dividend**" has the meaning set out in clause 10(2) of Schedule 1 of the FMCA.

"**DRP**" means any dividend re-investment plan established by the Company (as amended from time to time).

"**FMCA**" means the Financial Markets Conduct Act 2013.

"**NZX**" means NZX Limited.

"**NZX Listing Rules**" means the listing rules of NZX in relation to the NZX Main Board, except as waived or modified from time to time.

"**NZX Main Board**" means the main board equity securities market operated by NZX.

"**Participant**" means a shareholder who has elected to participate in a DRP.

"**Record Date**" means the date fixed by the board of the Company for determining entitlements under a DRP.

"**Shares**" mean ordinary shares in the Company and "**Shareholding**" means the Shares held by a shareholder of the Company.

"**Term**" has the meaning given to that term in clause 5.1.

1.1 **Interpretation:** In this agreement unless the context otherwise requires:

- (a) headings are to be ignored in construing this agreement;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this agreement);
- (d) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (e) each schedule or other attachment forms part of this agreement;
- (f) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, assign, executor, administrator and other representative of such party, person or entity;
- (g) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form; and
- (h) reference to a section, clause, sub-clause, schedule or a party is a reference to that section, clause, sub-clause, schedule or party in this agreement.

1.2 **Construction of on-market and off-market references:** Any reference to "on-market" refers to a transaction that takes place on the NZX Main Board and any reference to "off-market" refers to a transaction that does not take place on the NZX Main Board.

2. DIVIDEND RE-INVESTMENT PLAN

- 2.1 **No Obligation:** The Crown and the Company acknowledge and agree that the Company is not bound to implement any DRP during the Term. In the event that the Company implements a DRP, the Crown and the Company acknowledge and agree that the Company may, at its sole discretion, suspend or cancel such DRP at any time.
- 2.2 **FMCA:** The Company agrees that the offer of Shares under a DRP will be made relying upon clause 10 of Schedule 1 of the FMCA.
- 2.3 **Crown Participation:** The Crown agrees and undertakes that it will participate in each DRP only to the extent necessary to maintain the Crown's Shareholding percentage in the Company at the level it was at the Record Date (subject to rounding as set out in the DRP).
- 2.4 **Company will Facilitate Crown's DRP Participation:** The Company will make DRP offers with an option that a shareholder can elect to participate in each DRP only to the extent necessary to maintain its Shareholding percentage in the Company at the level it was at the Record Date (subject to rounding as set out in the DRP). The Company is hereby authorised by the Crown to select this option (and only this option) for the Crown for each DRP offer. The Company does not need to take any further action or give any further notice to the Crown regarding the Crown's participation in a DRP.
- 2.5 **Suspension or Termination of DRP Participation:** The Crown may by giving not less than three months' written notice to the Company:
- (a) terminate; or
 - (b) suspend; or
 - (c) resume (and conclude the suspension of),
- its participation in DRPs under this clause 2.

3. BUY-BACK

- 3.1 **On-Market:** The Company agrees that, during the Term, any Buy-Back undertaken by it will be effected by way of an on-market Buy-Back (under sections 63 or 65 of the Companies Act 1993) and an off-market Buy-Back of Shares from the Crown under and in accordance with this agreement.
- 3.2 **No Obligation:** Notwithstanding clause 3.1 above, the Crown and the Company acknowledge and agree that the Company is not bound to undertake any Buy-Backs during the Term. In the event that the Company undertakes any Buy-Backs, the Crown and the Company acknowledge and agree that the Company may, at its sole discretion, suspend or cancel any such Buy-Backs at any time.
- 3.3 **Share Cancellation:** As well as cancelling the Shares acquired by the Company off-market under this agreement, the Company must, on acquisition, cancel all Shares acquired by it on-market pursuant to a Buy-Back.
- 3.4 **Procedure:** Subject to clause 3.6, the Crown and the Company acknowledge and agree that they will comply with the procedure set out in Schedule 1 in respect of any Buy-Back.

3.5 **Crown Participation:** The Crown agrees and undertakes that it will only participate in the off-market component of a Buy-Back in accordance with this agreement and, specifically, will not sell any Shares to the Company, or directly or indirectly participate in a Buy-Back, on-market, or in any other way except in accordance with this agreement, during the Term. This clause 3.5 applies to the Crown's Shareholdings in excess of 51%.

3.6 **Suspension or Termination of Buy-Back Participation:**

(a) The Crown may, at any time, by notice to the Company:

- (i) suspend; or
- (ii) resume (and conclude the suspension of),

the disposition of Shares by the Crown under Buy-Backs, or a particular Buy-Back, under this clause 3. During any period commencing on the date on which the Crown notifies the Company that the disposition of Shares by the Crown under Buy-Backs, or a particular Buy-Back, is suspended, and ending on the date (if any) on which the Crown notifies the Company that the disposition of Shares under Buy-Backs, or a particular Buy-Back, is resumed, the Company is not obliged to offer to acquire shares from the Crown in accordance with Schedule 1.

(b) The Crown may, at any time, by notice to the Company, terminate the disposition of Shares by the Crown under Buy-Backs under this clause 3

4. MUTUAL REPRESENTATIONS

4.1 The Company represents and warrants to the Crown that, as at the date of this agreement, it is not aware of any information that is not generally available to the market and that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the Shares.

4.2 The Crown represents and warrants to the Company that, as at the date of this agreement, it is not aware of any information that is not generally available to the market and that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of the Shares.

5. TERM

5.1 **Term:** This agreement commences on the date of this agreement and shall continue until terminated in accordance with clause 5.2 ("**Term**").

5.2 **Termination:** Unless the parties agree otherwise, either party may terminate this agreement by giving not less than three months' written notice of termination to the other party.

6. NOTICES

6.1 **Notice:** Every notice or other communication ("**Notice**") for the purposes of this agreement shall:

- (a) be in writing; and

(b) be delivered in accordance with clause 6.2.

6.2 **Method of service:** A Notice shall be given by:

- (a) delivery to the physical address of the relevant party; or
- (b) posting it by pre-paid post to the postal address of the relevant party; or
- (c) sending it by email to the email address of the relevant party, so long as clause 6.4 is complied with.

6.3 **Time of receipt:** A Notice given in the manner:

- (a) specified in clause 6.2(a) is deemed received at the time of delivery;
- (b) specified in clause 6.2(b) is deemed received three Business Days after (but exclusive of) the date of posting;
- (c) specified in clause 6.2(c) is deemed (subject to clause 6.4) received:
 - (i) if sent between the hours of 9am and 5pm (local time) on a local working day, at the time of transmission; or
 - (ii) if subclause (i) does not apply, at 9am (local time) on the local working day most immediately after the time of sending.

For this purpose "local time" is the time in the place of receipt of the Notice, and a "local working day" is a normal working day in that place.

6.4 **Email notice:** A Notice given by email is not deemed received unless (if receipt is disputed) the party giving Notice produces a printed copy of the email that evidences that the email was sent to the email address of the party given Notice.

6.5 **Addresses:** For the purposes of this clause the address details of each party are:

- (a) the details set out below; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause 6.

The Crown

Physical address: The Treasury, 1 The Terrace, Wellington
 Postal address: PO Box 3724, Wellington 6140
 Email address: chris.white@treasury.govt.nz
 Attention: Director, Commercial, Infrastructure and Housing

The Crown's Agent

Ernst & Young Transaction Advisory Services Limited
 Physical address: 2 Takutai Square, Britomart, Auckland 1010

Email address: tom.goad@nz.ey.com
Attention: Tom Goad, Associate Director

The Company

Physical address: 185 Fanshawe Street, Auckland 1010
Postal address: Private Bag 92007, Auckland 1142
Email address: Karen.clayton@airnz.co.nz
Attention: Karen Clayton, General Counsel & Company Secretary

7. GENERAL

- 7.1 **Counterparts:** This agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this agreement by executing any counterpart.
- 7.2 **Amendments:** No amendment to this agreement is effective unless it is in writing signed by both parties.
- 7.3 **Entire agreement:** This agreement, together with each other agreement made in writing signed by all the parties, constitutes the entire agreement between the parties.
- 7.4 **Governing law:** This agreement is governed by and is to be construed in accordance with New Zealand law.

SIGNATURES

**SIGNED by THE SOVEREIGN IN RIGHT
OF NEW ZEALAND**

acting by and through the **MINISTER
OF FINANCE:**

[Name]
Minister of Finance

AIR NEW ZEALAND LIMITED by:

Signature of director/authorised signatory

Name of director/authorised signatory

SCHEDULE 1**BUY-BACK - PROCEDURE****1. DEFINITIONS:**

1.1 **Defined Terms:** In this schedule, unless the context otherwise requires:

"**Acquired Shares**" has the meaning given to that term in clause 3.1.

"**Acquisition Price**" has the meaning given to that term in clause 3.1.

"**Affected Shares**" has the meaning given to that term in clause 3.2.

"**Agent Trading Plan**" means an arrangement put in place by the Crown for purposes of a Buy-Back in reliance on and in accordance with section 261 of the FMCA.

"**Crown Agent**" means any person that has been appointed to act for the Crown in relation to this agreement.

"**On-Market Acquisition Date**" has the meaning given to that term in clause 2.1.

"**Settlement Date**" has the meaning given to that term in clause 3.2.

1.2 **Clause references:** Unless the context otherwise requires, references to clauses in this schedule are references to clauses of this schedule.

2. NOTIFICATION

2.1 **Notification to NZX:** At the end of each Business Day on which the Company acquires Shares on-market under a Buy-Back (each an "**On Market Acquisition Date**"), the Company will notify NZX (under the NZX Listing Rules) of the number of Shares that have been acquired on-market and the price paid by the Company for those Shares.

2.2 **Notification to Crown:** The Company will also, at the end of each On-Market Acquisition Date:

- (a) provide to the Crown and the Crown Agent a copy of the notice given by the Company to NZX under clause 2.1 on that On-Market Acquisition Date; and
- (b) determine with the Crown Agent the number of Shares owned by the Crown that, as a result of the on-market acquisition of Shares under the Buy-Back on that On-Market Acquisition Date, the Company would need to acquire from the Crown and then cancel to preserve the Crown's shareholding percentage in the Company at the level it was at immediately prior to the commencement of trading on that On-Market Acquisition Date (subject to rounding), and offer to acquire and then cancel such number of Shares from the Crown.

3. OFF-MARKET ACQUISITION AND CANCELLATION OF SHARES

3.1 Acquisition and cancellation:

- (a) The Crown Agent will, within one Business Day following receipt of a notification and offer pursuant to clause 2.2 in respect of an On-Market Acquisition Date, notify the Company, on behalf of the Crown, whether the terms of the Agent Trading Plan permit the Crown to accept the Company's offer to acquire from the Crown, and then cancel, the number of Shares necessary to preserve the shareholding percentage of the Crown in the Company at the level it was at immediately prior to the commencement of trading on the relevant On-Market Acquisition Date.
- (b) If the Crown Agent accepts, on behalf of the Crown, the Company's offer to acquire such number of Shares ("**Acquired Shares**") from the Crown, the Company will acquire from the Crown the Acquired Shares at such price per Acquired Share as is equal to the volume weighted average price of Shares acquired by the Company on-market on the relevant On-Market Acquisition Date ("**Acquisition Price**"), and then cancel the Acquired Shares.
- (c) If the Crown Agent does not accept, on behalf of the Crown, the Company's offer to acquire Shares on a Business Day then no acquisition will take place in respect of the notification given by the Company pursuant to clause 2.2(b) in respect of the relevant On-Market Acquisition Date.

3.2 Settlement:

- (a) Subject to clause 3.2(b), where the Crown Agent accepts (for the Crown) the Company's offer to acquire and then cancel the Acquired Shares in respect of an On-Market Acquisition Date, the Acquired Shares will be transferred to the Company at the Acquisition Price on the Business Day that is three Business Days after the relevant On-Market Acquisition Date ("**Settlement Date**"). On the Settlement Date:
 - (i) the Crown will give to the Company unencumbered title to and ownership of the Acquired Shares and must, for this purpose, deliver to the Company a duly executed transfer of the Acquired Shares in favour of the Company in registrable form; and
 - (ii) immediately after the Crown has complied with clause 3.2(a)(i), the Company will pay the Acquisition Price for the Acquired Shares to the Crown by direct transfer of immediately available funds or in any other form that the Crown and the Company agree in writing.
- (b) Where the Company acquires Shares on-market under a Buy-Back, but settlement of the on-market acquisition of any such Shares has not taken place by the time the Crown is required to transfer Acquired Shares to the Company under clause 3.2(a):
 - (i) the Company will advise the Crown of the number of Shares in respect of which settlement has not occurred ("**Affected Shares**") and any effect on the Acquisition Price; and

- (ii) the relevant number of Acquired Shares and the Acquisition Price calculated in accordance with clause 3.1 in respect of that On-Market Acquisition Date is deemed to be adjusted accordingly.
 - (c) Where the number of Acquired Shares that the Crown is required to transfer to the Company in respect of an On-Market Acquisition Date has been adjusted in accordance with clause 3.2(b), and settlement of the on-market acquisition of any of the Affected Shares subsequently takes place, then the Company will acquire and then cancel, and the Crown will transfer to the Company, in accordance with clause 3.2(a), such number of Acquired Shares as reflects the subsequent settlement of the on-market acquisition of such Affected Shares with the Acquisition Price being calculated in accordance with clause 3.1(b) taking into account the acquisition of the Affected Shares.
- 3.3 **Representation by the Crown:** The Crown represents and warrants to the Company that at settlement on each Settlement Date the relevant Acquired Shares will be in the sole legal and beneficial ownership of the Crown and will be free and clear of all mortgages, charges, liens, options and other encumbrances or third party rights, whether legal or equitable.
- 3.4 The Company must not cancel any Shares that it holds as treasury stock as at the commencement of this agreement, or any Shares acquired after the commencement of this agreement as the result of an on-market buy-back for the sole purpose of acquiring Shares to be held as treasury stock for subsequent issue to employees under one or more incentive plans adopted by the Company