

**DATED July 2002**

**HER MAJESTY THE QUEEN**

the Crown

- and -

**First NZ Capital Group Limited**

the Contractor

**CONTRACT FOR CONSULTANCY SERVICES**

**THIS AGREEMENT** is made on July 2002

**BETWEEN:**

- 1 **HER MAJESTY THE QUEEN ACTING BY AND THROUGH THE SECRETARY TO THE TREASURY** (the "Crown")
- 2 **FIRST NZ CAPITAL GROUP LIMITED** (the "Contractor")

**RECITALS:**

- A. The Crown requires consultancy services from time to time in relation to projects undertaken by the Treasury on its behalf.
- B. The Contractor specialises in providing consultancy services.
- C. The parties have agreed that the Contractor will provide services to the Crown on the terms and conditions set out in this Agreement.

**IT IS AGREED:**

**1. INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires:

"Services" means the work to be performed by the Contractor as described in the Schedule;

"Schedule" means the schedule to this Agreement;

a "person" includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state and agency of a state (in each case, whether or not having a separate legal personality);

a gender includes each other gender;

singular includes the plural and vice versa;

any legislation includes a modification and re-enactment of legislation enacted in substitution for a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and

headings are to be ignored in construing this Agreement.

**2. APPOINTMENT**

2.1 The Crown agrees to engage the Contractor to provide, and the

Contractor agrees to provide, the Services.

### **3. TERMS**

- 3.1 Subject to the provisions of this Agreement, the term of this agreement is as specified in the Schedule.
- 3.2 This Agreement may be extended for a further period if mutually agreed between the parties in which case the provisions of this Agreement shall continue to apply until otherwise agreed.

### **4. RESPONSIBILITIES**

- 4.1 The Contractor shall devote such time, attention and skill as is reasonably necessary for the proper and efficient provision of the Services. For this purpose, the Contractor agrees to provide its Services for the average minimum period specified in the Schedule.
- 4.2 If the Contractor is a company or a partnership, for the purpose of providing the Services, the Contractor agrees to provide such experienced and suitable personnel as the Crown may from time to time approve. The initial personnel to be so provided with the Crown's approval are specified in the Schedule.
- 4.3 Except as otherwise specified in this Agreement or agreed from time to time between the Contractor and the Crown, the Contractor will work from the Contractor's own premises and will be responsible for supplying all equipment necessary in order to enable the Contractor to provide the Services.
- 4.4 The Crown and the Contractor will designate representatives as their respective points of contact for the administration of this Agreement. The first such representatives are specified on the Schedule and may be varied by notice.
- 4.5 The Contractor will, if requested, provide a monthly written report to the Crown outlining the progress on the provision of the Services. Except as otherwise specified in this Agreement or agreed from time to time between the Contractor and the Crown, the Contractor shall not be under the day to day control or supervision of the Crown or any of its representatives in respect of the performance of the Contractor's obligations under this Agreement.
- 4.6 The Contractor, at its own cost, shall correct any errors, omissions, defects or faults in the Services of which the Crown notifies the Contractor in writing during the term of this Agreement or within the period specified in the Schedule.

- 4.7 The Contractor will indemnify the Crown against any direct losses, together with all costs and expenses (including legal expenses) which the Crown incurs ("Crown Loss") arising out of the wilful default or grossly negligent acts or omissions of the Contractor or its employees in breach of this Agreement. For the avoidance of doubt this indemnity shall not otherwise than in accordance with this clause place the Contractor in the position of an insurer of a Crown Loss.
- 4.8 The Contractor will indemnify the Crown against any tax which the Crown may be liable to, but does not, withhold from the payments to the Contractor to be made under this Agreement whether by reason of the Contractor being held to be a non resident or an employee of the Crown or otherwise howsoever.
- 4.10 Clause 4.9 shall survive both the termination of this Agreement and completion of the services hereunder, whichever shall occur.

## **5. CONDITIONS**

- 5.1 The Crown will pay the Contractor the amounts specified in the Schedule.
- 5.2 In addition to the payments set out in clause 5.1, the Crown will reimburse the Contractor for those expenses, incurred in connection with the provision of the Services, specified in the Schedule.
- 5.3 The Contractor and the Crown agree and declare that the Contractor is engaged to provide services as an independent contractor and is not an employee of the Crown. At no time and under no circumstances will the Crown have any liability to pay or be called upon by the Contractor to pay to the Contractor any sum or sums in respect of:
- 5.3.1 holiday pay;
  - 5.3.2 sick pay;
  - 5.3.3 redundancy or any other form of severance pay;
  - 5.3.4 superannuation; or

5.3.5 taxes or levies under the Accident Insurance Act 1998.

## **6. CONFIDENTIALITY**

- 6.1 The Contractor acknowledges that the information contained in this Agreement is official information in terms of the Official Information Act 1982 and, in line with the policy of that Act, such information may be released to the public unless there is good reason, in terms of that Act, to withhold the information.
- 6.2 Except to its employees and when necessary to fulfil its obligations under this Agreement, the Contractor will not at any time disclose to any third party any knowledge, information or data provided to it by or on behalf of the Crown under this Agreement, or any information concerning the content and terms of this Agreement, unless authorised in writing by the Crown to do so.
- 6.3 The Crown will ensure that the Contractor's advice is not misrepresented in any disclosure by the Crown and will inform the Contractor of the nature and content of such disclosure as soon as reasonably practicable prior to the disclosure.
- 6.4 Any knowledge, information or data provided to the Contractor or its employees by or on behalf of the Crown pursuant to this Agreement will only be used by the Contractor or its employees for the purpose of fulfilling the Contractor's obligations under this Agreement.
- 6.5 This clause 6 will continue to have effect when this Agreement has ended but will cease to apply to any knowledge, information or data which has been made public by the Crown.
- 6.6 Employees of the Contractor are deemed to be bound by this clause 6 and, if and when required by the Crown, the Contractor will procure all or any of those employees to execute a deed stating that they understand and will abide by the terms of this clause.

## **7. OTHER BUSINESS ACTIVITY**

- 7.1 Subject to the provisions of this Agreement, during the term of this Agreement the Contractor shall not offer or provide services to any company, firm or person other than the Crown in respect of any matter where in the Contractor's reasonable opinion the interests of that company, firm or person may or do conflict with the interests of the Crown regarding the subject matter of this Agreement.
- 7.2 Where the Contractor is of the reasonable opinion that such a conflict of interest has arisen or may arise, the Contractor may, with the prior written consent of the Crown, act for that person regarding that subject matter. The Crown's consent to the Contractor so acting will not be unreasonably withheld.

7.3 Neither the Crown nor the Contractor shall at any time during the continuance of this Agreement or for a period of 12 months after the termination of this Agreement, solicit or endeavour to entice away or encourage any other person to solicit or endeavour to entice away any person who was an employee of the other party at the date of termination of this Agreement or during the preceding 6 months.

## **8. DISPUTES**

8.1 All disputes arising between the parties concerning the construction or performance of this Agreement or the rights and liabilities of the parties shall be settled amicably by the parties but if this is not possible shall be determined in accordance with the Arbitration Act 1996.

8.2 For the purposes of determining any dispute under the Arbitration Act 1996, the parties appoint the President of the New Zealand Law Society or a person nominated by him or her as arbitrator.

## **9. TERMINATION**

9.1 Either party may terminate this Agreement by giving the other party not less than ten (10) days notice in writing of its intention to terminate it.

## **10. RETURN OF DOCUMENTS AND COPYRIGHT**

10.1 Ownership of and copyright in any document, records, papers or other material produced pursuant to this Agreement belongs to the Crown.

10.2 Upon termination of this Agreement the Contractor:

10.2.1 shall promptly deliver on request to the Crown or its authorised representative all documents, records or papers in the Contractor's possession or under its control and which are referred to in clause 10.1; and

10.2.2 shall be entitled to retain a copy of any documents, records or papers as is necessary to enable it to retain a record of its work and calculations.

## **11. AMENDMENT TO AGREEMENT**

11.1 The parties may at any time by supplemental agreement in writing vary, amend, add to, make substitutions in, or alter, this Agreement including the Schedule and after the execution of any such supplemental agreement this Agreement shall take effect accordingly.

## **12. NOTICES**

- 12.1 Notices may be given by either party by letter addressed to the other party. The initial addresses of each party are specified in the Schedule. Any such notice may be sent by mail or left at such office or address and if sent by mail shall be deemed to have been given on the day after the day on which the letter is posted.

## **13. MISCELLANEOUS**

- 13.1 Time is of the essence in respect of all dates and times for performance by the Contractor of its obligations under this Agreement. No failure to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver of a right under this Agreement will be effective unless it is signed by the party waiving the right.
- 13.2 As the Contractor is, under the provisions of the Protected Disclosures Act 2000, included in the definition of an employee any disclosure under that Act must be made in accordance with the internal procedures as set out at: <http://www.treasury.govt.nz/careers/protecteddisclosures.asp>
- 13.3 The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.
- 13.4 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 counterparts.
- 13.5 This Agreement is governed by and is to be construed in accordance with New Zealand law.

**EXECUTED** as an agreement.

**SIGNED** for and on behalf of )  
**the Crown** by Mike James, )  
Branch Manager, Asset and )  
Liabilities Management Branch )  
in the presence of: )

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Witness:  
Occupation:  
Address:

**AUTHORISED SIGNATORY** of )  
First NZ Capital Group )  
in the presence of: )

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Witness:  
Occupation:  
Address:



# SCHEDULE

## Description of Services (clause 1.1):

The Contractor will provide weekly reports that set out:

- a the hours spent by each of its personnel providing the Services over the previous week, including detail of what category of work the Services are attributed to as set out in First NZ Capital Group Ltd's Memorandum of 1 July 2002 and a forecast of the hours to be spent over the forthcoming week, including detail of what category of work the Services are attributed to as set out in First NZ Capital Group Ltd's Memorandum of 1 July 2002; and
- b the out-of-pocket expenses incurred or committed,

during the week to which the report relates. The reports will be provided by 1:00pm each Monday during the term of the Agreement.

The Contractor will provide a report on Air New Zealand Limited as outlined below (the "report"):

### Priority Terms

Analyse the business cases provided by Air NZ regarding strategic options available to it. Identify the advantages and disadvantages of each option, comment on the robustness of the cases presented and Air NZ's recommendations, identify any omissions, errors or inconsistencies.

Identify and comment on any ownership options that may be available to Air NZ that have not been included in the Air NZ submission and the risks, costs and benefits of each option from the perspective of the principal shareholder.

Advise on the implications for the Crown, as principal shareholder, if it wished to preserve an option to seek a strategic partner at a later date including the likely cost of that option (ie the magnitude of any further capital required from shareholders over the period if Air NZ's business is not sustainable in the absence of a strategic partner immediately), an assessment of the valuation implications of selling a stake now versus selling a stake later and the probability of a strategic partner presenting itself.

Comment on the value implications of all viable options from the perspective of the principal shareholder (the Government).

Advise a range of prices that it may be considered reasonable for Air NZ to make its rights placement at. Provide justification for that range.

## Second Order Terms

Comment on the value implications of the content of a shareholders agreement between Qantas and the New Zealand Government. If one is not identified, advise the issues that the Crown could agree to have included in a shareholders agreement.

Comment on and/or identify any potential exit strategies that could be invoked in order to remove Qantas at a later date if necessary.

Comment on the implications of the proposals on the governance of the airline, including risks and benefits.

Advise on measures that the airlines (particularly Qantas) could take to mitigate any public detriments that are likely to arise as a result of reducing competition in the marketplace (note, the Commerce Commission will analyse and report on competition implications).

## Access to Information

In connection with the Contractor's provision of the above Services, the Crown will make reasonable endeavours to secure:

- Air New Zealand's co-operation so that the Contractor has access to all information concerning Air New Zealand and Qantas which the Contractor reasonably deems appropriate; and
- access to Air New Zealand's officers, directors, employees, accountants, counsel and other representatives (collectively, the "Representatives").

The Crown acknowledges that the Contractor will rely on such information supplied by Air New Zealand and Qantas and their Representatives without assuming any responsibility for independent investigation or verification thereof.

All non-public information concerning Air New Zealand and Qantas which is given to the Contractor will be used solely in the course of the performance of its services hereunder and will be treated confidentially by it for so long as it remains non-public. Except as otherwise required by law, the Contractor will not disclose this information to a third party without Air New Zealand's and Qantas' consent.

## Due Date

The Contractor will provide the report by Monday 19 August 2002. The Contractor will provide a progress update to the Crown by Friday 26 July 2002 and again around Friday 9 August 2002. If further work is required to complete the defined tasks beyond this time, it will be continued under this contract on the same terms and conditions.

**Term of contract (clause 3.1):**

From the date of execution to 19 August 2002.

**Average minimum period during which services will be provided (clause 4.1):**

Not applicable.

**Initial personnel to provide services (clause 4.2):**

Directors, Vice Presidents, Associates and Analysts of the Contractor. The Contractor undertakes not to use any employees based overseas to complete services under this engagement in New Zealand.

**Representatives (clause 4.4):**

- (a) For the Crown: Kirsty Flannagan
- (b) For the Contractor: Tim Robinson

**Period after completion within which Contractor must be notified of errors, omissions, defects or faults (clause 4.6):**

Two weeks.

**Payments (clause 5.1):**

The Contractor will be paid an Advisory Fee at the following daily rates:

<i>Personnel</i>	<i>Daily rate</i>
Directors	NZ\$3,250 (GST exclusive)
Vice Presidents	NZ\$2,750 (GST exclusive)
Associates	NZ\$2,500 (GST exclusive)
Analysts	NZ\$2,250 (GST exclusive)

Payments will be made following receipt of monthly itemised invoices.

In the event that this Agreement is terminated by either party, the Contractor will be paid the Advisory Fee accrued up to the date that either party gives notice of its intention to terminate. Payment will be made following receipt of an itemised invoice.

**Expenses to be reimbursed (clause 5.2):**

All reasonable out-of-pocket expenses, including without limitation, the fees and expenses of the Contractor's legal counsel, if any, and any other advisor retained by the Contractor (it being understood that the retention of any such advisor, or legal counsel, will be made with the prior approval of the Crown), will be reimbursed plus GST. Reimbursements will be made following receipt of monthly itemised invoices.

In the event that this Agreement is terminated by either party, the Contractor will be paid for any actual costs incurred and actual commitments entered into by the Contractor as at the date that either party gives notice of its intention to terminate. Payment will be made following receipt of an itemised invoice showing details of the actual costs incurred and actual commitments entered into by the Contractor.

**Addresses for notices (clause 12.1):**

Crown: 1 The Terrace  
(PO Box 3724)  
Wellington

Contractor: 10<sup>th</sup> Floor, Caltex Tower  
282 – 292 Lambton Quay  
(PO Box 3394)  
Wellington