

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

BERMUDA AIRPORT AUTHORITY ACT 2016

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WHEREAS it is desirable and expedient and in the national interest to redevelop the L.F. Wade International Airport;

AND WHEREAS the Government of the United Kingdom has delegated authority to the Government of Bermuda pursuant to a Letter of Entrustment dated 17 July 2015 to enter into a project agreement with the Canadian Commercial Corporation to redevelop, operate and maintain the Airport;

AND WHEREAS the Government of Bermuda and the Canadian Commercial Corporation intend to enter into the Project Agreement;

AND WHEREAS the Government intends to novate its rights and obligations under the Project Agreement to the Authority and the Canadian Commercial Corporation intends to novate its rights and obligations under the Project Agreement to the Developer;

AND WHEREAS the Authority and the Developer intend to enter into an amended and restated Project Agreement to redevelop the Airport;

AND WHEREAS the Developer shall redevelop, operate and maintain the Airport subject to the provisions of the Agreement;

AND WHEREAS the Minister responsible for civil aviation currently has responsibility for the general administration, control and management of the Airport and for the Department of Airport Operations and it is in the national interest and expedient to

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establish the Authority to oversee the redevelopment of the Airport and its maintenance and operation by the Developer and to carry out certain functions relating thereto;

AND WHEREAS it is proposed that the Authority will lease the Leased Lands to the Developer;

AND WHEREAS upon expiry of the lease the Authority will assume responsibility for the ongoing operation and maintenance of the Airport;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### PART 1 PRELIMINARY

#### Citation

1 This Act may be cited as the Bermuda Airport Authority Act 2016.

#### Interpretation

2 In this Act, unless the context otherwise requires—

“Aecon” means Aecon Construction Group Inc., its Affiliates, permitted assigns and successors;

“Affiliate” in respect of a person means any other person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first person;

“Agreement” means collectively, the entirety of the intended agreement between the Developer and the Authority for the redevelopment and operation and maintenance of the Airport, including the amended and restated Project Agreement, as amended, supplemented, extended, novated or restated from time to time and each and every other agreement between the Developer and the Authority relating to the Airport by which the Developer and the Authority or their respective assigns are bound;

“air traffic control service” means a service provided for the purpose of preventing collisions between aircraft and, on the manoeuvring area, between aircraft and obstructions, and expediting and maintaining an orderly flow of air traffic;

“Airport” means the airport known currently as the L.F. Wade International Airport;

“Airport Lands” means all that land shown on the plan in Schedule 1 including but not limited to the Leased Lands and Authority Controlled Lands;

“Airport Property” means all tangible or intangible property, assets and rights of whatsoever kind used or intended to be used in connection with the Airport and whether in the possession or control of the Department of Airport Operations or its personnel or the Civil Aviation Authority or any other person,

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excluding the Airport Lands but including for greater certainty all intellectual property, inspection records and all documents of whatsoever kind relating to the Airport;

“Airport Services” has the meaning set out in the Agreement;

“apron” means an area in the Airport intended to accommodate aircraft for the purposes of loading or unloading passengers, mail or cargo, fuelling, parking, or maintaining aircraft;

“authorised person” means any person authorised in writing—

(a) by the Governor; or

(b) by the Chief Executive Officer under section 15,

to exercise a particular function or power pursuant to any Air Navigation (Overseas Territories) Order or otherwise referred to in this Act;

“Authority” means the Bermuda Airport Authority established under section 3;

“Authority Controlled Lands” has the meaning set out in the Agreement;

“Board” means the Board of Directors of the Authority referred to in section 13;

“Canadian Commercial Corporation” means the Crown Corporation of the Government of Canada by that name, and its permitted assigns and successors in title;

“Capital Project” means any new construction of Fixed Assets on the Leased Lands, demolition or removal of existing Fixed Assets or major expansion or renovation of a Fixed Asset by the Developer, and includes developments to accommodate Commercial Services pursuant to the Agreement, but excluding the Construction;

“cargo” means all articles, goods, materials, merchandise, wares or produce being conveyed or transported by aircraft, ship or vehicle, for commercial gain or otherwise, including, without limitation, livestock, accompanying baggage, vessel or vehicle equipment and spare parts, mail and stores;

“Chairman” means the Chairman of the Board;

“Chief Executive Officer” means the person appointed as such pursuant to section 25;

“Civil Aviation Authority” means the Bermuda Civil Aviation Authority established by the Bermuda Civil Aviation Authority Act 2016;

“Commercial Services” has the meaning set out in the Agreement;

“Construction” means everything required for the substantial completion (in accordance with the Agreement) of the new Airport terminal;

“Control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal

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representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person;

“Developer” means “Bermuda Skyport Corporation Limited”, a Bermuda local company, its Affiliates, permitted assigns and successors, including any assigns, successors or transferees that becomes the Developer in connection with the Finance Parties exercising their remedial rights pursuant to the documents contemplated by the Agreement;

“Director” means a voting member of the Board referred to in section 13;

“document” includes an electronic record as defined in the Electronic Transactions Act 1999;

“Effective Date” means the effective date of the Agreement as determined by the Minister to be the effective date;

“employee” has the meaning given in section 3 of the Employment Act 2000;

“Excepted Authority Activities” means collectively—

- (a) any services, activities concerning weather forecasting or reporting, whether commercial, media, educational or otherwise;
- (b) air traffic control activities or services for third parties that are directly related to the Airport’s air traffic control activities (i.e., those or similar air traffic control activities and services that are currently performed by the FAA for the Government of Bermuda); or
- (c) any services, operations or activities related in any way to non-terrestrial equipment, vehicles or activities (excluding, for greater certainty, the operation of a spaceport) including, without limitation, space flight monitoring and tracking and tracking of satellite communications;

“FAA” means the national civil aviation regulatory authority of the United States (including for Airports, Air Traffic Control, Aviation Safety and Commercial Space Transportation) known as the Federal Aviation Administration, which is an agency of the US Department of Transportation pursuant to the Federal Aviation Act 1958, as amended from time to time;

“Finance Parties” means those persons to whom any senior debt is owed, including any hedge providers, and any offshore or onshore collateral agent and security intermediary;

“Fixed Assets” means—

- (a) all hangars, runways, buildings, structures, fixtures, improvements and other property and facilities of the Authority located therein, thereon or thereunder; and

- (b) all terminals, hangars, runways, buildings, structures, fixtures, improvements, additions, buildings, installations and facilities to be located, constructed or installed, or which may be located, constructed or installed therein, thereon or thereunder;
- (c) the equipment permanently affixed or permanently located therein, such as electrical, plumbing, sprinkler fire protection and fire alarm, heating, steam, sewage, drainage, cooling, refrigerating, telephone and other communications, gas and other systems, and their pipes, wires, mains, lines, tubes, conduits, equipment and fixtures and all paving, drains, culverts, ditches and catch basins;

“functions” includes powers and duties and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and carrying out of the duties;

“Government” means the Government of Bermuda;

“Leased Lands” means all that part of the Airport Lands and Leased Premises to be leased by the Authority to the Developer pursuant to the Agreement and includes all easements, licences, privileges, rights and appurtenances relating thereto;

“Leased Premises” has the meaning set out in the Agreement;

“Letter of Entrustment” means the letter from the Director, Overseas Territories, Foreign and Commonwealth Office, United Kingdom to the Governor of Bermuda acting on behalf of the Government dated 17 July 2015 as amended, extended or superseded from time to time;

“manoeuvring area” means the part of the Airport provided for the take-off and landing of aircraft and for the movement of aircraft on the surface, excluding the apron and any part of the Airport provided for the maintenance of aircraft;

“Minister” means the Minister responsible for the Authority;

“Other Governmental Services” means all services, activities, functions or undertakings that are provided by or on behalf of any governmental authority (other than the Authority) at the Airport, which shall include, without limitation, customs, immigration, public health, agricultural, military, policing and other matters of public policy or national interest, but shall exclude Retained Government Services, Excepted Authority Activities and other activities, functions or undertakings that the Developer has the right or obligation to undertake pursuant to the intended Agreement (including, without limitation, Airport Operations, Airport Services, Commercial Services, Construction and Capital Projects);

“Project Agreement” means the agreement to be entered into between Canadian Commercial Corporation and the Government for the redevelopment, operation of and maintenance of the Airport;

“Retained Government Services” means those services which the Authority is to provide and which are to be more particularised in the Agreement including, but not limited to, air traffic control, meteorology, ground electronics, and air crash and fire rescue;

“Secretary” means the person selected as the Secretary of the Authority under paragraph 1 of Schedule 2;

“vesting day” means the day appointed under section 8(3) to be the vesting day; and

“works” means all design, construction, fit-out, commissioning and works of any nature whatsoever in connection with the redevelopment of the Airport pursuant to the Agreement or, as the case may be, any phase or Capital Project forming part thereof, and includes all ancillary works preparatory to or associated with such works, whether undertaken on or off the Leased Lands.

## PART 2

### BERMUDA AIRPORT AUTHORITY

#### Establishment of the Bermuda Airport Authority

3 (1) There is established an authority to be known as the “Bermuda Airport Authority” which shall have such functions as are assigned to it by this Act and by any other law.

(2) The Authority is a body corporate, having perpetual succession and a common seal.

(3) The Authority may sue and be sued in its corporate name and may for all purposes be described by that name.

(4) The Authority may acquire, hold, lease or dispose of real and personal property.

(5) The Authority may exercise any rights, powers and privileges, and incur the liabilities and obligations of a natural person of full age and capacity.

#### Principal functions of the Authority

4 (1) The principal functions of the Authority shall be to redevelop, operate, maintain, manage, oversee, administer and perform all functions and operations of the Airport, including (without limitation) the following principal functions—

- (a) notwithstanding subsections (1)(d) and (3)(b) of section 32B of the Public Treasury (Administration and Payments) Act 1969 (oversight of capital projects by Office of Project Management and Procurement), to oversee on behalf of the Government the performance by the Developer and Aecon of the Agreement and the works to be carried out under the Agreement on the Leased Lands, and upon the expiration of the Agreement to take over the responsibility for operating, maintaining, and servicing the Airport;

- (b) to enter into all contracts, agreements and arrangements that the Authority is required to enter into, execute and deliver, including without limitation the novation agreement with Canadian Commercial Corporation, the Government and the Developer, whereby the Government and the Canadian Commercial Corporation will be released from their respective obligations under the Project Agreement and the Authority will become entitled to all right, title and interest of the Government in the Project Agreement and assume all of the Government's duties, liabilities and obligations under the Project Agreement and the Developer will become entitled to all right, title and interest of Canadian Commercial Corporation in the Project Agreement and assume all of Canadian Commercial Corporation's duties, liabilities and obligations under the Project Agreement;
  - (c) to perform the Authority's obligations under the Agreement;
  - (d) to own, either in whole or in part, or manage, alone or jointly with another person, the Airport;
  - (e) to take all proper measures for the safety, security, management, control, operation, marketing and development of the Airport;
  - (f) to deliver or procure the delivery of the Retained Government Services, Other Governmental Services, and Excepted Authority Activities;
  - (g) to provide such services and facilities at the Airport including Commercial Services of any kind as the Authority considers necessary or desirable, having regard to the development of air transport, the promotion of tourism and the efficiency, economy and safety of operation of the Airport;
  - (h) to regulate the fees and charges specified in the Agreement;
  - (i) to promote investment in and at the Airport; and
  - (j) to engage in any business activity, either alone or in conjunction with other persons and either within or outside Bermuda, that the Authority considers to be advantageous to the development, operation, maintenance or servicing of the Airport.
- (2) The functions of the Authority specified in this section shall be exercised and discharged in such manner as not to conflict or be inconsistent with—
- (a) the terms and conditions of the Letter of Entrustment;
  - (b) any provision of law in force in Bermuda relating to civil aviation or any direction, order or notice made, given or issued under any such provision of law;
  - (c) the functions of the Civil Aviation Authority;
  - (d) any international convention relating to civil aviation adhered to for the time being by the United Kingdom Government or by the Government, in

so far as such provisions apply in relation to civil aviation or civil airports in Bermuda;

- (e) any agreement relating to civil aviation or civil airports in Bermuda entered into and for the time being subsisting between the United Kingdom or the Government and any other jurisdiction; and
- (f) the terms and conditions of the Agreement.

Minister may give general directions

5 (1) Subject to section 4(2), the Minister may, after consultation with the Board, and after taking into account and having due regard to such representations as the Board may make to him, give such general and specific directions in written form—

- (a) on matters relating to finances; and
- (b) as to the policy to be followed by the Authority in the performance of its functions, and the Board shall give effect to such directions.

(2) The power conferred by subsection (1) to issue, make, serve, or grant any direction is construed as including a power exercisable in the like manner and subject to the like conditions, if any, to vary, revoke, cancel or otherwise terminate the direction.

Conferral of additional functions

6 The Minister may, if he so thinks fit, by order—

- (a) confer on the Authority such additional functions relating to the Airport or connected with the functions of the Authority as he considers appropriate;
- (b) make such provision as he considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Authority of functions under this section or the performance by the Authority of the functions so conferred.

General duty of the Authority

7 (1) It shall be the general duty of the Authority at all times—

- (a) to conduct its business in a cost-effective and efficient manner;
- (b) to take such steps either alone or in conjunction with other persons as are necessary for the efficient operation, safety, management and development of the Airport;
- (c) to have regard to the safety standards relating to the operation of aircraft and air navigation applied and enforced by the Bermuda Civil Aviation Authority;
- (d) to oversee operations within the Airport.

(2) Should any Court proceedings be issued against the Authority, the Court may make such order, including an order for costs, as it thinks fit, provided that the Court may not issue an order requiring the Authority to pay compensatory or punitive damages for

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actions taken in the performance of its duties, unless such order is in accordance with the Agreement.

### Transfer of Public Lands

8 (1) On the vesting day, all of the Airport Lands and all rights, obligations, powers and privileges relating to or connected with such lands which were immediately before that day vested in the Government or the Department of Airport Operations or the Civil Aviation Authority or any other Government agency and used or intended to be used in connection with the Airport shall, without any conveyance or assignment, stand vested in the Authority in fee simple absolute.

(2) Every licence, wayleave or other permission granted by the Government in relation to the Airport Lands and in force immediately before the vesting day shall continue in force as if granted by the Authority.

(3) The Minister shall by order, as soon as practicable, appoint a day to be the vesting day for the purposes of this Act.

(4) Drawings of the Airport Lands can be viewed—

(a) in Schedule 1; or

(b) at the Ministry of Public Works (Department of Land Surveys and Registration).

### Assurances relating to the Airport Lands

9 (1) The assurances and undertakings set forth in the following provisions of this section are given for greater certainty.

(2) The Government owns the Airport Lands to be vested in the Authority in fee simple absolute in possession.

(3) The Government shall hold the Authority harmless against any assertion by any foreign government or any other person of any right to occupy or use any part of the Airport Lands.

(4) The Government shall hold the Authority harmless against any assertion by any person of any right of pre-emption held by him under the Acquisition of Land Act 1970 in respect of any part of the Airport Lands.

(5) If any part of the Airport Lands was polluted or contaminated before the commencement of this Act in such a way as to prevent or restrict its use or exploitation by the Authority (or by any person deriving rights through the Authority, including the Developer) for normal and customary purposes, or as to pose a threat to the environment or to human health or safety, then the Government—

(a) in the case of the Authority, the Developer, and any lessee or tenant, shall hold it harmless against any loss that the Authority, the Developer or any lessee or tenant may suffer on account of that pollution or contamination;

(b) in the case of a person deriving rights through the Authority, including the Developer, and injuriously affected by that pollution or contamination,

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shall also hold it harmless against any loss that he may suffer on account of that injurious affection, with the cost of such remedial action to be borne by the Government.

(6) The above assurances and undertakings may be amplified by the Government and the Authority—

- (a) in any lease made under section 12(1); or
- (b) in any agreement between the Government and the Authority, being an agreement ancillary to such a lease.

### Acquisition of other land

10 (1) The Authority may acquire by agreement or compulsorily any land, easement, interest or other right over land, where the Minister is of the opinion that there is a reasonable expectation that the land will be required by the Authority in the future for any one or more of the purposes described in subsection (2).

(2) The purposes for which land may be acquired under subsection (1) are—

- (a) to develop or redevelop the Airport;
- (b) to secure that any land adjacent to the Airport shall not be used in such manner as would interfere with or would cause danger or damage to aircraft located at, approaching or leaving the Airport;
- (c) to alter or demolish any building or installation which, in the opinion of the Authority, is likely to obstruct or otherwise interfere with the navigation of aircraft using the Airport;
- (d) to carry out the functions of the Authority.

(3) The Acquisition of Land Act 1970 shall apply to an acquisition of land under this section as if reference to the Government therein is reference to the Authority.

### General powers of the Authority

11 (1) For the purposes of carrying out its functions, but subject to the provisions of this Act, the Authority shall have the power—

- (a) to carry on such business and other activities;
- (b) to do all such things and enter into all such transactions,

as appear to the Authority to be necessary, or advantageous, for it to carry on or perform or enter into, for or in connection with the discharge of its functions.

(2) Without prejudice to the generality of the foregoing provisions of this Act, but subject to the provisions of this Act, for the purposes of carrying out its functions, the Authority may—

- (a) engage such staff, consultants and other persons as it considers necessary, on such terms and conditions as it considers appropriate, subject to the requirements of applicable law of Bermuda;

- (b) make such charges, as the Authority may determine, for the provision of its services under this subsection for the purpose of the Authority's functions;
- (c) open and operate interest bearing bank accounts within or outside Bermuda;
- (d) with the approval of the Minister and the Minister of Finance, borrow money and otherwise raise capital in accordance with this Act; and
- (e) except to the extent prohibited by this Act or any other legislation, with the consent of the Minister, delegate in writing any of the functions conferred on the Authority under sections 4 or 6.

#### Leasing of Airport Lands

12 (1) Notwithstanding anything to the contrary and notwithstanding in particular section 8 of the Public Lands Act 1984 (requirement for approval of Legislature), the Authority may, with the prior approval in writing of the Minister lease all or any part of the Airport Lands to the Developer on terms and conditions as set out in the Agreement and the Developer may accept and enter into any such lease.

(2) The Authority may grant such easements to the Developer, Aecon and Subcontractors, for a period not exceeding 30 years, over the Airport Lands as the Authority considers necessary or convenient—

- (a) so that access may be had by persons or vehicles to the Leased Lands;
- (b) for the provision of utilities and infrastructure to the Airport; and
- (c) for use by the Developer, Aecon and Subcontractors during the works at their own risk as temporary storage or staging areas.

#### Board of Directors

13 (1) There shall be a Board of Directors of the Authority which, subject to the provisions of this Act and legislation relating to civil aviation, shall be responsible for the actions of the Authority and the general administration of its affairs and business.

(2) The Board shall consist of not less than five nor more than seven Directors who are voting members of the Board appointed by the Minister, from persons appearing to him to be qualified having had experience of, or having shown capacity in, matters relating to—

- (a) civil aviation;
- (b) industry;
- (c) commerce;
- (d) transportation;
- (e) finance;
- (f) law;

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- (g) government; or
- (h) administration,

and one non-voting member.

(3) The Directors shall be paid such fees and allowances as the Minister may determine.

(4) The provisions of Schedule 2 shall have effect with respect to the constitution and proceedings of the Board and, subject to the provisions of Schedule 2, the Board may regulate its own proceedings.

### Interest register

14 (1) The Minister shall cause to be compiled and maintained, in accordance with this Act and in such form as the Minister considers appropriate, an interest register.

(2) Where any Director has an interest in any business conducted and regulated by the Authority, the Director shall file a written notice in the interest register as soon as reasonably practicable after the Director becomes aware that such business is being transacted.

### Delegation of powers

15 (1) Subject to this Act, the Board may delegate to—

- (a) a Director;
- (b) a committee appointed by the Board;
- (c) the Chief Executive Officer; or
- (d) any employee,

any of the functions or powers of the Authority under this Act, except the power of delegation conferred by this section, provided that the Chief Executive Officer may entrust to and confer upon any officer or employee of the Authority such responsibilities as he shall think fit.

(2) Every delegation under this section shall be in writing and shall be revocable by the Board, but no such delegation shall prevent the Board from exercising the powers so delegated.

### Immunity from suit

16 No action, suit, prosecution or other proceedings shall lie against any Director, any employee or any person acting on behalf of the Authority in respect of any act done, or any omission made, in good faith in the execution or intended execution of any function under this Act.

### Confidentiality

17 (1) Subject to subsection (2), a person, being a Director, an officer, employee, agent or adviser or employee of the Authority shall not reveal or in any manner communicate or

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disclose to any other person, except as authorised or required by law, any information acquired by him by reason of his office or employment or in exercise of the Authority's function under or for the purposes of this Act or any other law, which information relates to the Agreement, or the affairs of—

- (a) the Authority;
- (b) Canadian Commercial Corporation;
- (c) the Developer;
- (d) Aecon; or
- (e) any subcontractor of the Developer or Aecon,

in particular, but not limited to, such information relating to Airport Property previously owned by the Government and any personnel files in respect of which the Personal Information Protection Act 2016 will apply.

- (2) Subsection (1) shall not apply to a disclosure—
  - (a) lawfully required or permitted by a court of competent jurisdiction in Bermuda;
  - (b) made for the purpose of assisting the Authority to exercise a function conferred on it by this Act or any other law;
  - (c) made in relation to the affairs of the Authority, the Developer, or Aecon for which consent has voluntarily been given by the party in respect of which the information relates;
  - (d) where the information disclosed is or has been available to the public from any other source; or
  - (e) lawfully made to a person entitled to obtain such information under the law of Bermuda.
- (3) A person who contravenes subsection (1) commits an offence and is liable—
  - (a) on summary conviction, to a fine not exceeding \$20,000 or to imprisonment not exceeding one year or to both such fine and imprisonment; or
  - (b) on conviction on indictment, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART 3  
FINANCE AND BUDGET

Financial year

18 (1) The financial year of the Authority is the period of twelve months ending on the 31st day of March in any year.

(2) The first financial year shall consist of the period commencing on the date of the establishment of the Authority and ending on the 31st day of March of the following year.

Budget

19 (1) The Authority shall submit to the Minister and Minister of Finance for their approval—

(a) no later than three months prior to the commencement of each financial year, income and expenditure estimates in such detail as the Ministers may require relating to the activities of the Authority for that financial year of operation of the Authority; and

(b) as soon as may be, any subsequent proposal to amend such estimates,

and the estimates, together with any amendments, upon being approved by the Ministers, shall be the Authority's budget for the financial year to which it relates.

(2) The Ministers may in any case, on the application of the Authority, increase or decrease the period of three months specified in subsection (1)(a).

Funds of the Authority

20 The funds of the Authority for the performance of its functions shall consist of—

(a) grants from the Government out of moneys appropriated by the Legislature for the purposes of the Authority;

(b) any moneys accruing to the Authority in the course of the Authority's discharge of its functions; and

(c) any other moneys received by the Authority.

Loans

21 (1) The Minister may, with the consent of the Minister of Finance, make loans to the Authority, in which case the Minister shall specify in writing the terms and conditions of the loan, including the duration of the loan and the rate of interest to be charged.

(2) The Authority, with the consent of the Minister of Finance, may enter into loan agreements with licensed financial institutions which may be secured by either—

(a) the full faith and credit of the Government; or

- (b) the future anticipated revenue that the Authority will derive from the payment of the Authority's fees; or
- (c) any other assets owned by the Authority.

(3) The Minister of Finance may provide a guarantee to any financial institution that makes a loan to the Authority pursuant to subsection (2).

#### Accounts and audit

22 (1) The Authority shall keep books of account and maintain proper records of its operations.

(2) The accounts of the Authority shall be audited by the Auditor General or such other auditor as may be appointed annually by the Auditor General on such terms as the Auditor General may determine.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless he is a public accountant who is registered or deemed to be registered under the Chartered Professional Accountants of Bermuda Act 1973.

#### Annual report

23 (1) The Authority shall, within six months of the end of each financial year, submit to the Ministers an annual report in respect of that year containing—

- (a) a copy of the audited accounts of the Authority together with the Auditor's report on those accounts;
- (b) a report on the operations of the Authority during that financial year; and
- (c) such other information as the Ministers may, prior to the completion of the annual report or as supplementary thereto, require.

(2) The Minister shall cause a copy of the annual report to be laid before both Houses of the Legislature at the sitting of the House of Assembly immediately following the submission of the report.

### PART 4

#### STAFF OF THE AUTHORITY

#### Appointment of staff

24 (1) The Authority shall appoint and employ as staff qualified persons necessary for the performance of its functions.

(2) The Chief Executive Officer may arrange with the permanent secretary of the ministry or department concerned the secondment of a public officer to work at the Authority for a period of up to one year, and any person so seconded shall, in relation to salary, pensions, gratuity or conditions of service, be treated as continuing in the service of the Government.

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(3) Consistent with its approved budget, and subject to this Act and all applicable laws, the Authority shall establish the remuneration, terms and conditions of employment of each member of the staff.

### Chief Executive Officer

25 (1) The Board shall appoint and employ a Chief Executive Officer as the principal officer of the Authority who shall—

- (a) have general managing direction of the Authority;
- (b) superintend the performance of the functions of the Authority as set out in sections 4 and 6;
- (c) oversee the works and ongoing provision of Airport Services by the Developer pursuant to the Agreement;
- (d) have responsibility for the enforcement and administration, on behalf of the Governor and the Board, of the provisions of law relating to the functions of the Authority that are applicable in Bermuda or any other related law; and
- (e) report to the Board and be present during such parts of each board meeting as the Chairman deems to be appropriate.

(2) The Chief Executive Officer shall be responsible for the day-to-day management and administration of the Authority to the extent of the authority delegated to him by the Board, including—

- (a) the overall safety and security of the Airport;
- (b) financial and operational matters;
- (c) preparing regular financial and operational reports for the Authority; and
- (d) the administration of the performance of the functions of the Authority.

(3) In the Chief Executive Officer's absence or inability to fulfil his functions, the Board may appoint a senior employee of the Authority who is an authorised person to discharge the functions of the Chief Executive Officer during the period of his absence or inability.

(4) Any person appointed pursuant to subsection (3), when acting within the scope of the appointment, shall exercise the full authority of the Chief Executive Officer, and shall be eligible for remuneration commensurate to the service provided.

(5) Subject to this Act and applicable law, the terms and conditions on which the Chief Executive Officer holds office are to be as determined by the Board.

### Transfer of Department of Airport Operations officers to alternative employment

26 (1) A person who immediately before the coming into force of this Act, was a public officer in the service of the Department of Airport Operations may be offered alternative

employment comparable to that in which he was engaged prior to the establishment of the Authority or other reasonably suitable work with the Authority or the Developer.

(2) If he accepts such offer in accordance with its terms, the person shall become an employee of the Authority or the Developer on terms and conditions of employment that, taken as a whole, are no less favourable than those that applied to his office immediately before the coming into force of this Act, except to the extent that—

- (a) other terms and conditions of employment are agreed between him and the Authority or the Developer (subject to the Employment Act 2000 and other applicable laws);
- (b) existing employment terms need to be varied to change existing pension arrangements and other benefits to align with more typical private sector pensions and benefits;
- (c) disciplinary matters shall be dealt with in accordance with the disciplinary rules and procedures established by the Authority (which shall be subject to the Employment Act 2000 and other applicable laws);
- (d) an amendment to the terms and conditions is required to enable the Authority or the Developer to restructure itself, its senior management, its employees, reporting structures or business operations in a manner it considers appropriate;
- (e) applicable law otherwise provides.

(3) Every public officer who accepts an offer of employment in accordance with the terms offered to him pursuant to this section shall be deemed to have transferred into employment as an employee with the Authority or the Developer on the date this Act comes into operation.

(4) Every public officer who does not accept employment in accordance with the terms offered to him pursuant to this section, or transfer to another Government department, shall, subject to any individual agreement to the contrary, have his employment terminated on or before the commencement of this Act.

Authority to comply with National Pension Scheme (Occupational Pensions) Act 1998  
27 For the avoidance of doubt, the Authority shall comply with the National Pension Scheme (Occupational Pensions) Act 1998 in relation to pensions for employees of the Authority.

Applicability of Health Insurance Act 1970  
28 For the avoidance of doubt, the Health Insurance Act 1970 shall apply to the Authority.

PART 5

SAVINGS, TRANSITIONAL AND FINAL PROVISIONS

Application to Crown

29 (1) This Act binds the Crown.

(2) The Authority shall not be regarded as the servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

(3) The Authority shall not be exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local, except as provided in subsections (4) to (7).

(4) The Authority shall be deemed to be an agency of the Crown for the purposes of section 4 of the Stamp Duties Act 1976, notwithstanding subsection (2) of this section.

(5) The Authority shall not be subject to customs duty, foreign currency purchase tax or land tax.

(6) The references to customs duty, foreign currency purchase tax and land tax in this section are respectively references to the taxes provided for in the Customs Tariff Act 1970, the Foreign Currency Purchase Tax Act 1975 and the Land Valuation and Tax Act 1967.

(7) The Authority shall not be liable for stamp duty, and in any case where the Stamp Duties Act 1976 provides that all the persons executing an instrument are liable for stamp duty under that Act and the Authority is one of the persons executing the instrument then, notwithstanding anything to the contrary in that Act, no other person is liable for stamp duty.

Airport fees

30 (1) The Authority shall, subject to the prior receipt of written approval from the Minister,—

- (a) publish Airport fees existing prior to the reset of all Airport fees; and
- (b) reset all Airport fees on the financial close of the Agreement.

(2) The fees mentioned in subsection (1) and any amendments to such fees shall be—

- (a) published in the Gazette; and
- (b) posted on the Authority's website,

but such publication shall not be subject to the Statutory Instruments Act 1977.

(3) The Minister shall by regulations, with effect from the financial close of the Agreement, repeal Airport fees in existence prior to the financial close of the Agreement.

## BERMUDA AIRPORT AUTHORITY ACT 2016

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### Savings and transitional

31 The savings and transitional provisions that are set out in Schedule 3 shall have effect.

### Regulations and consequential amendments

32 (1) The Minister on his own initiative or at the request of the Authority may make regulations prescribing anything which may be or is required to be prescribed under this Act.

(2) The Minister may by regulations repeal or amend any provision relating to the Airport—

(a) in any law that is passed before this Act; or

(b) in any other instrument made under an Act before the passing of this Act,

and make such transitional provision as may be necessary, where it appears to him that the provision is inconsistent with, or requires amendment consequentially upon or has become unnecessary in consequence of, the provisions of this Act or the Regulations.

(3) Regulations made by the Minister pursuant to this Act shall be subject to the negative resolution procedure.

### Commencement

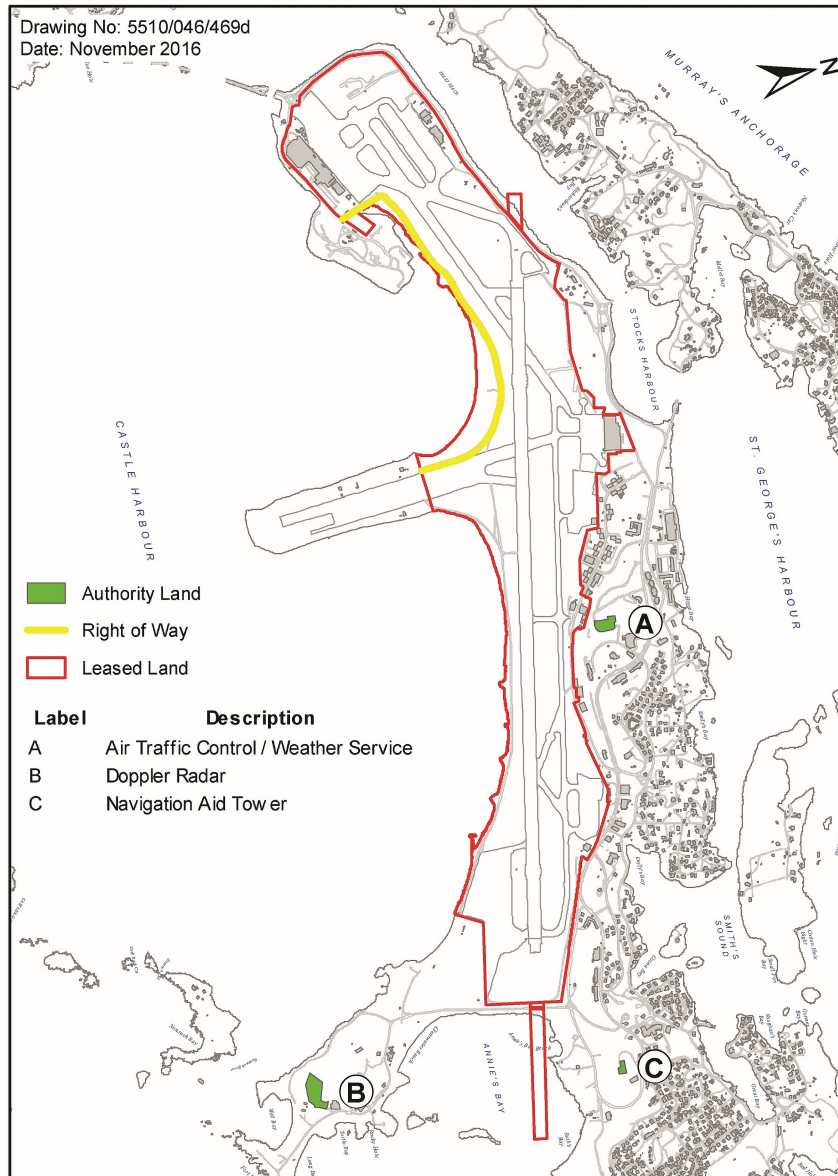
33 (1) This Act shall come into operation on such day as the Minister may by notice in the Gazette appoint.

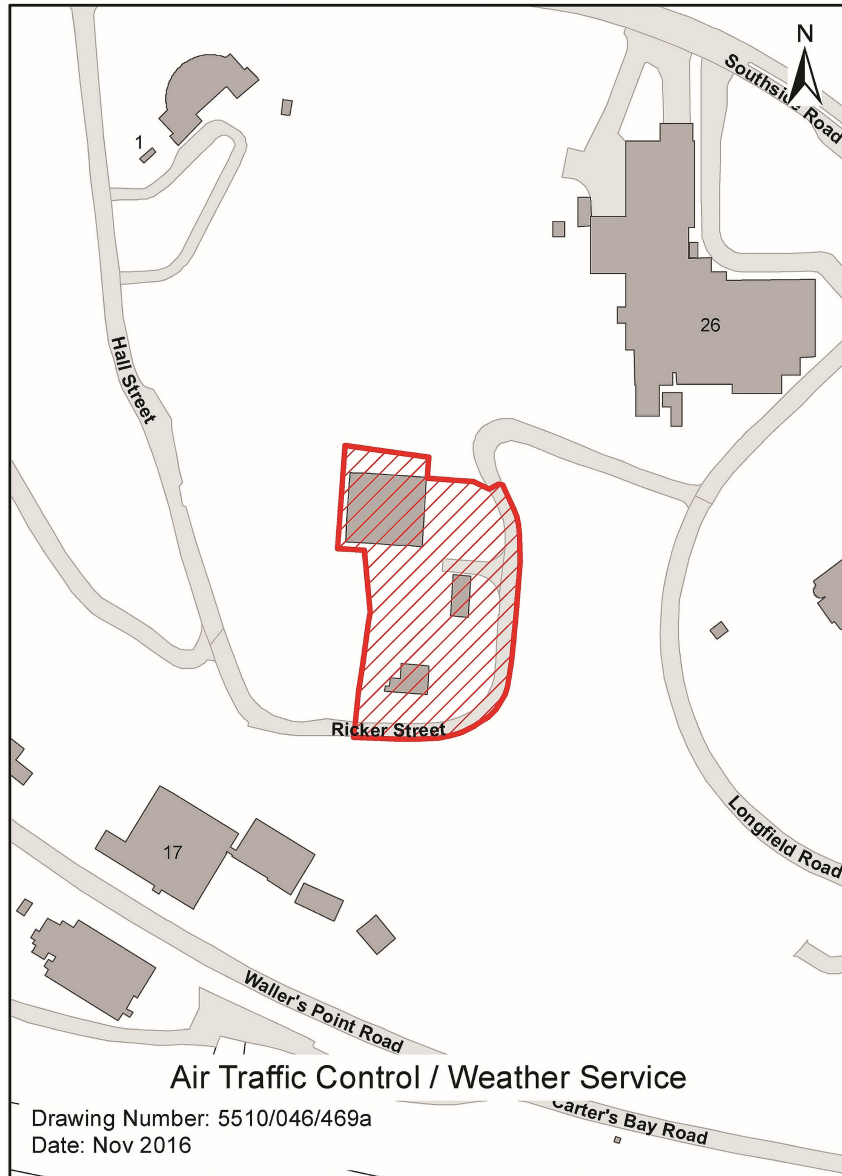
(2) The Minister may appoint different days for different provisions of this Act.

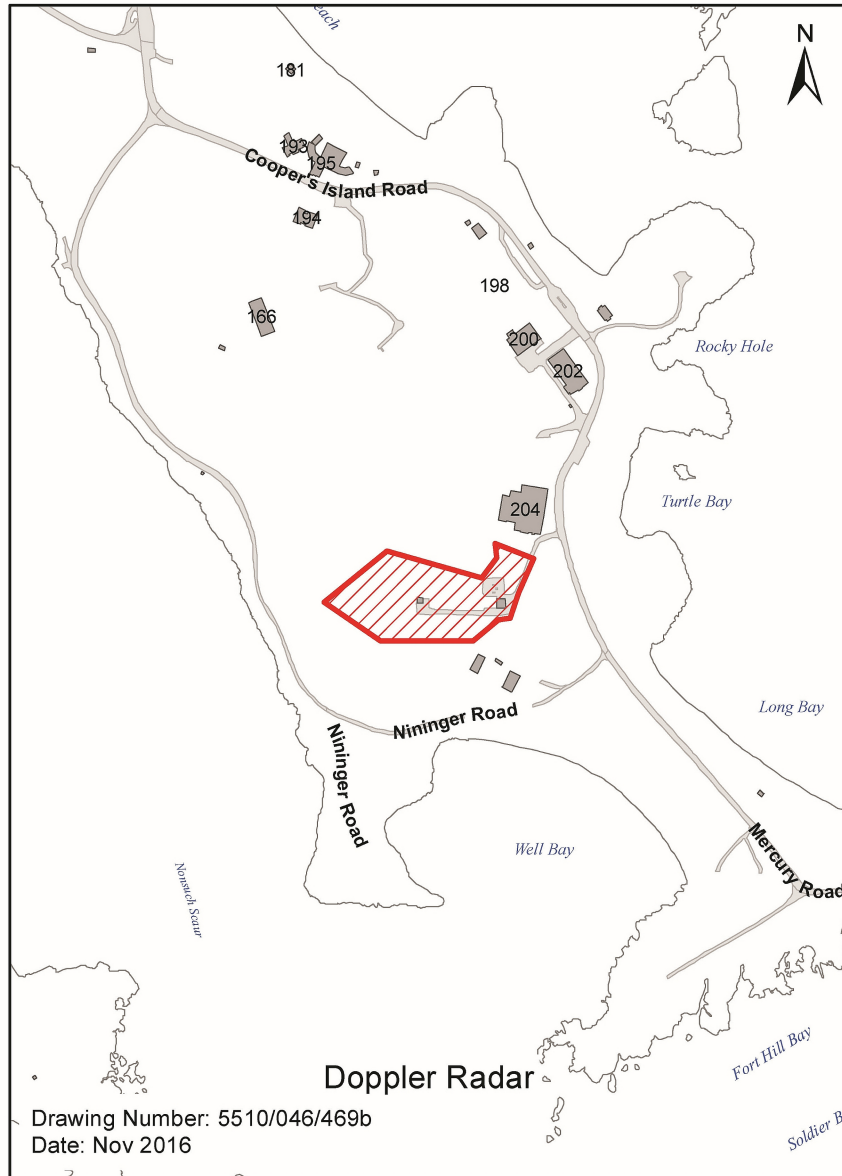
SCHEDULE 1

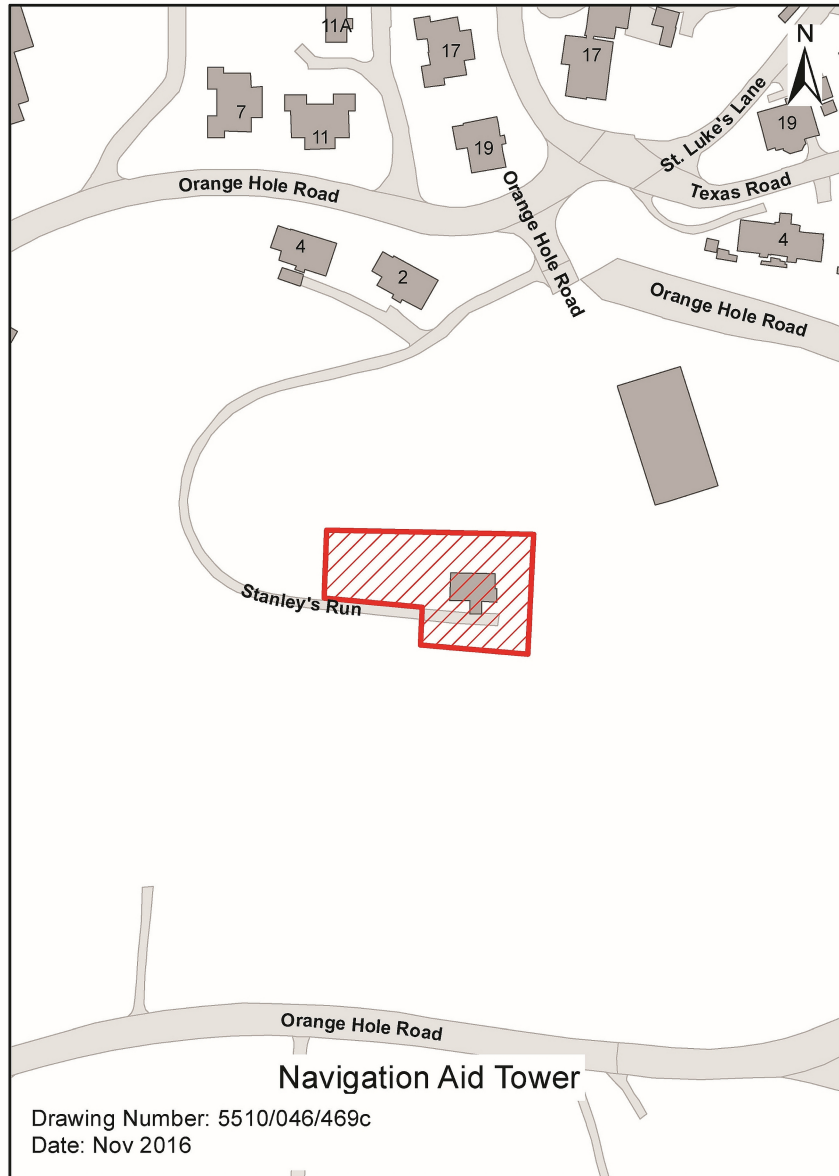
(Section 8)

AIRPORTS LANDS









SCHEDULE 2

(Section 13)

CONSTITUTION AND PROCEEDINGS OF BOARD

Appointment of Board, Chairman and other officers

- 1 (1) The Minister shall appoint Directors as follows—
- (a) two shall be selected by the Governor; and
  - (b) the other Directors shall be appointed by the Minister, after consultation with the Governor.
- (2) The Minister shall appoint from among the Directors a Chairman and a Deputy Chairman, and the Directors shall select one of the members of the Board as a Secretary.
- (3) The Minister shall appoint the Chief Executive Officer to be an ex-officio, non-voting member of the Board.

Tenure of office of Directors

- 2 (1) Subject to subparagraph (2), a Director shall hold office on such conditions and for such term, not exceeding three years, as the Minister may determine.
- (2) The initial Directors of the Board shall be appointed as follows—
- (a) at least one for a term of two years; and
  - (b) at least one for a term of three years.
- (3) A Director may be reappointed for any term not exceeding three years.

Removal of Director

- 3 The Minister may revoke the appointment of a Director if, in his opinion—
- (a) the Director is unable to perform his functions or has engaged in malfeasance of office or failed to disclose a conflict of interest; or
  - (b) the Director has failed, without adequate justification, to attend three successive meetings of the Board.

Resignation

- 4 Any Director may resign from his appointment at any time by giving notice in writing to the Minister.

Filling of vacancies

- 5 If a Director resigns, dies or otherwise vacates his office before the expiry of the term for which he has been appointed, the Minister may appoint another person for the unexpired period of the term of office of the Director in whose place he is appointed.

Disclosure of interest by Directors

6 (1) A Director who is in any way, directly or indirectly, interested in any matter relating to a contract, other transaction or project of the Board shall (whether or not his interest appears in the register of interests kept under section 14(1)), disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Board and, after the disclosure, that Director shall not take part in any deliberation of the Board with respect to that contract, transaction or project.

(3) For the purpose of determining whether there is a quorum, a Director shall be treated as being present at a meeting notwithstanding that under subparagraph (2) he cannot vote or has withdrawn from the meeting in respect of the matter in question.

Committees of Board

7 (1) For the purpose of advising or assisting the Board in the performance of its functions, the Board may appoint such committees as the Board determines is appropriate.

(2) Each committee appointed by the Board shall consist of at least two Directors together with such other persons as the Board determines is appropriate for the purpose in respect of which the committee is appointed.

(3) On receipt of advice from any of its committees, the Board shall decide whether or not to adopt that advice, in whole or in part or with such modifications as the Board thinks fit.

(4) A committee appointed under this paragraph shall, in the performance of functions delegated by the Board under subparagraph (2), at all times be subject to such directions, conditions and restrictions as may be imposed by the Board and shall adhere to all policies of the Board.

(5) The chairman of each committee appointed under this paragraph shall ensure that the committee prepares and submits to the Chairman of the Board a report of the functions delegated to the committee, and the progress thereof, before the end of every quarter in the year.

Use of Seal, authentication and authenticity of documents

8 (1) The seal of the Authority shall be authenticated by the Chairman or Deputy Chairman, together with the signature of the Chief Executive Officer or other officer or servant of the Authority duly authorised to act on behalf of the Chief Executive Officer.

(2) All instruments, contracts and other documents issued by the Authority, other than those required by law to be under seal, and all decisions of the Authority, shall be signed by the Chairman or some other member, officer or employee of the Authority authorised by the Board to do so on behalf of the Authority.

(3) A document purporting to be an instrument issued by the Authority, and to be sealed or signed on behalf of the Authority in accordance with this paragraph, shall be

received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

Meetings and proceedings of Board

9 (1) The Chairman shall summon meetings of the Board as often as may be required and must summon at least two meetings every year.

(2) The quorum at every meeting of the Board shall be three Directors.

(3) A decision at a meeting of the Board shall be adopted by a simple majority of the Directors present and voting except that in the case of an equality of votes the Chairman, or in his absence the Deputy Chairman, or in his absence the Director presiding over the meeting shall have a casting vote in addition to his original vote.

(4) The Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of the Board.

(5) Where both the Chairman and the Deputy Chairman are absent from a meeting, the Directors present may elect a Director to preside at that meeting.

(6) Where not less than four Directors of the Board request the Chairman by notice in writing signed by them to convene a meeting of the Board for any purpose specified in the notice, the Chairman shall, within seven days from the receipt of the notice, convene a meeting for that purpose.

(7) The Board may act notwithstanding any vacancy in its number.

(8) Subject to the provisions of this Act, the Board may regulate its own procedure generally, and, in particular, the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

Validity of acts

10 Provided a quorum is present, the validity of any proceeding of the Authority shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

SCHEDULE 3

(Section 31)

SAVINGS AND TRANSITIONAL MATTERS

Transfer of property, rights and liabilities

1 (1) With effect from the commencement date, all Airport Property vested immediately before that date in the Government or the Civil Aviation Authority and used by it for the operation of the Department of Airport Operations is hereby transferred to and vested in the Authority without any assignment in the same manner and for the same purpose as previously held by the Government and in the case of a chose-in-action it shall not be necessary for Government or the Authority to give notice to the person bound by the chose-in-action of the vesting effected by this subsection.

(2) The transfer and vesting as set out in subparagraph (1) shall extend to the whole of such Airport Property and shall include—

- (a) all rights, powers, privileges and all things necessary or ancillary thereto which are held or enjoyed in connection with, or appertaining to, the same; and
- (b) all liabilities and other obligations,

to which, immediately before the commencement date, the Government or the Department of Airport Operations was subject to in carrying out its functions with respect to the operation and maintenance of the Airport.

(3) Subject to the provisions of this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, contracts, agreements, instruments, permits, certificates, documents, warrants and other arrangements subsisting immediately before the date of coming into force of this Act affecting or relating to any of the Airport Property transferred to the Authority by or under this Act shall—

- (a) have full force and effect against or in favour of the Authority; and
- (b) be enforceable fully and effectually,

as if instead of the Government, the Authority had been named therein or had been a party thereto, and otherwise in substitution of the Government.

(4) For the avoidance of doubt, the Authority has the power to assign, transfer or under any agreement novate any rights and obligations transferred to and vested in the Authority pursuant to this section and any such assignment, transfer or novation shall be deemed to have been made or entered into by the Authority and the parties thereto on the commencement date, unless the relevant instrument or agreement provides otherwise.

Transfer of proceedings etc.

2 (1) Anything in the process of being done by the Government or in relation to carrying out its functions with respect to the operation and maintenance of the Airport or the Department of Airport Operations on the commencement date, including any legal

## BERMUDA AIRPORT AUTHORITY ACT 2016

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proceedings then pending to which either of those bodies is a party, may be continued by or in relation to the Authority.

(2) Where immediately before the commencement date—

- (a) any legal proceedings are pending to which the Government is or is entitled to be a party; and
- (b) such proceedings are related to any of the Airport Property, or any right or liability transferred by or under this Act,

the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government or shall be made a party thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

## BERMUDA AIRPORT AUTHORITY BILL 2016

### EXPLANATORY MEMORANDUM

This Bill seeks to establish the Bermuda Airport Authority (“the Authority”) that will take on the responsibility the general administration, control and management of the L. F. Wade International Airport and to oversee the redevelopment of the Airport and its maintenance and operation by the Developer.

Clause 1 is the citation.

Clause 2 is the interpretation section.

Clause 3 provides for the establishment of the Authority as a body corporate.

Clause 4 sets out the principal functions of the Authority.

Clause 5 makes provision for the Minister to give general directions to the Authority.

Clause 6 makes provision for the conferment of additional functions by the Minister on the Authority.

Clause 7 sets out the general duties of the Authority.

Clause 8 sets out the prerequisites, on the day of vesting, for the transfer of public lands. A plan of the Airport Lands is in Schedule 1.

Clause 9 sets out the assurances, between the Government of Bermuda and the Authority, relating to the Airport Lands.

Clause 10 sets out the prerequisites by which the Authority may acquire land, an easement, an interest or other right over land.

Clause 11 sets out the general powers of the Authority.

Clause 12 sets out the requirements for the leasing of Airport Lands to the Developer.

Clause 13 provides for the establishment of a Board of Directors of the Authority and introduces Schedule 2.

Clause 14 mandates that the Minister shall cause to be compiled and maintained, in accordance with this Act and in such form as the Minister considers appropriate, register of interest.

Clause 15 makes provision for the delegation of powers by the Board of the Authority.

Clause 16 provides that all Directors, members of staff and persons acting on behalf of the Authority shall be immune from suit, prosecution or other proceedings, in respect of any act done or any omission made, in good faith, in the execution or intended execution of any function performed in accordance with this Act.

Clause 17 mandates that a Director, officer, employee, agent, advisor or member of staff of the Authority shall be bound by a duty of confidentiality.

## BERMUDA AIRPORT AUTHORITY BILL 2016

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Clause 18 mandates that the financial year of the Authority is the period of twelve months ending on the 31st day of March in any year.

Clause 19 mandates that the Authority shall submit to the Minister and the Minister of Finance, for their approval, income and expenditure budget estimates.

Clause 20 sets out the composition of the Authority's funds, to be used in the performance of its functions.

Clause 21 makes provision for the Minister, with the consent of the Minister of Finance, to make loans to the Authority.

Clause 22 mandates that the Authority shall keep books of account and maintain proper records of its operations. Such records shall be audited by the Auditor General or such other auditor as may be appointed by the Auditor General.

Clause 23 sets out the conditions by which the Authority shall submit to the Minister an annual report.

Clause 24 sets out the means by which the Authority shall appoint and employ staff members.

Clause 25 sets out the means by which the Board of the Authority shall appoint and employ a Chief Executive Officer.

Clause 26 sets out the manner in which employees of the Department of Airport Operations officers are to be transferred to alternative employment.

Clause 27 mandates that the Authority shall comply with the provisions of the National Pension Scheme (Occupational Pensions) Act 1998.

Clause 28 affirms the application of the provisions of the Health Insurance Act 1970 to the Authority.

Clause 29 binds the Crown to the provisions of this Act, clarifies the status of the Authority and sets out the Authority's exemptions from certain taxes.

Clause 30 mandates that the Authority shall reset all Airport fees on the financial close of the Agreement, subject to the prior receipt of the written approval of the Minister. The fees are to be gazetted and posted on the Authority's website.

Clause 31 gives effect to the savings and transitional provisions in Schedule 3.

Clause 32 provides for regulations under the Act to be subject to the negative resolution procedure, and gives the Minister power to make consequential amendments.

Clause 33 is the commencement provision.