

CONFIDENTIAL



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

AGREEMENT

**AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)**

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017
Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

29 January 2021

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AGREEMENT

AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS (NORFOLK ISLAND)

Date

This Agreement is made on 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications ABN 86 267 354 017** (the Agency)
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;

Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;
Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 4 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;

Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Jim Baldwin, Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are

Regulatory Approvals	covered by the Agency or the Commonwealth of Australia more broadly; means regulatory approvals required to be obtained from Australian or foreign governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;

- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

- 2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.
- 2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

- 2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.
- 2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

- 2.4.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:

- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
- b. to its Personnel to enable effective management or auditing of contract-related activities;
- c. to the responsible Minister;
- d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
- f. where authorised or required by law to be disclosed; or
- g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.

4.1.2. Subject to clause 4.2.2, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 5 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination

5.1. Termination for fault

5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:

- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
- b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

6. Force Majeure

6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, so far and so long as it is affected by the Force Majeure Event.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

7.1.3. The address for the Agency is:

Physical address 111 Alinga Street
Canberra ACT 2601

Postal address GPO Box 594
Canberra ACT 2601

Email s22(1)(a)(ii) @infrastructure.gov.au

7.1.4. The address for Qantas is:

Physical address 10 Bourke Road, Mascot NSW 2020

Postal address	As above
Email	s47F @qantas.com.au

7.2. When effective

- 7.2.1. A notice is deemed to be effected:
- if delivered by hand* upon delivery to the relevant address;
 - if sent by post* upon delivery to the relevant address;
 - if transmitted electronically* upon actual receipt by the addressee.
- 7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

- 8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.
- 8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

- 8.2.1. Qantas agrees, in carrying out the Activity, to comply with:
- all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - all applicable policies and procedures relating to work health and safety.
- 8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

- 8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal

Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

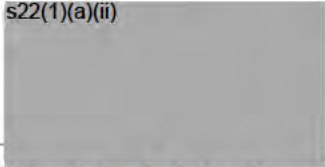
8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Signatures

SIGNED for and on behalf of the Commonwealth of Australia represented by the Department of Infrastructure, Transport, Regional Development and Communications:

NICOLE PEARSON
Name of Delegate

s22(1)(a)(ii)

Signature of Delegate

In the presence of:

s22(1)(a)(ii)

Name of witness

s22(1)(a)(ii)

ness

EXECUTED on behalf of Qantas Airways Limited ACN 009 661 901 by its duly authorised representative:

s47F

Name of authorised representative

s47F

representative

s47F

Name of witness

s47F

Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights

Flight	Scheduled Departure Time (local time)	Point of Origin	Destination	Special Conditions
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	31 January 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	31 January 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
Initial BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	31 January 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	31 January 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
Second BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	1 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	1 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
Third BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	2 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	2 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
Fourth BNE-NLK-BNE Flight				

Flight from Brisbane to Norfolk Island	3 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	3 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil

3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

4. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;
- c. the Agency's name and address;
- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

5. Funding

The Agency will pay to Qantas in respect of the Activity the following amounts (the **Funding**):

s47(1)(a)

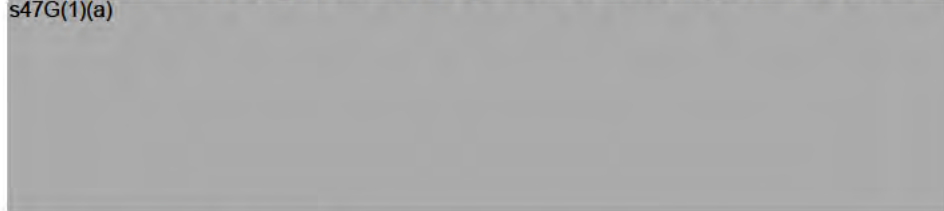


by no later than 7 days after the later of:

- c. the date on which the Flight has arrived at its Destination in Sydney or Brisbane (as applicable); and
- d. the date on which the Agency receives a Correctly Rendered Invoice in respect of the relevant amount.

Each of the above payments will be paid to the following Qantas account:

s47G(1)(a)



6. Regulatory Requirements

- 6.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:
 - a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
 - b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
 - c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
 - d. that all flight crew and cabin crew personnel hold appropriate licenses;
 - e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
 - f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
 - g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

7. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- slot availability and overflight approvals;
- confirmation of all Regulatory Approvals;
- crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;

- safety, security and operational risk assessment and sign off by Qantas;
- in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- ground handling and other service availability on Norfolk Island;
- determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

CONFIDENTIAL**Australian Government****Department of Infrastructure, Transport,
Regional Development and Communications****AGREEMENT****AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)**

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017
Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

15 February 2021

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AGREEMENT

AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS (NORFOLK ISLAND)

Date

This Agreement is made on 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications ABN 86 267 354 017** (the Agency)
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions

1. Interpretation

1.1. Definitions

- 1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;

Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;
Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 4 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;

Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Jim Baldwin, Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are

Regulatory Approvals	covered by the Agency or the Commonwealth of Australia more broadly; means regulatory approvals required to be obtained from Australian or foreign governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

- 1.2.1. In this Agreement, unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and words in the plural include the singular;
 - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - d. words importing a person include a partnership and a body whether corporate or otherwise;
 - e. a reference to dollars is a reference to Australian dollars;
 - f. a reference to an Item is a reference to an Item in the Schedule;

- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

- in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.
- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.

2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.

2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

2.4.1. Qantas agrees to:

- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
- b. give that Auditor timely access to records; and
- c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
- d. provide all reasonable assistance to the Auditor,

to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.

2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:

- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
- b. if it has failed to verify that information, the reasons for that failure; and
- c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
- d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

- 3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:
- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. to its Personnel to enable effective management or auditing of contract-related activities;
 - c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
 - f. where authorised or required by law to be disclosed; or
 - g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

- 4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.
- 4.1.2. Subject to clause 4.2.2, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 5 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination

5.1. Termination for fault

5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:

- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
- b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

6. Force Majeure

6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, so far and so long as it is affected by the Force Majeure Event.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

7.1.3. The address for the Agency is:

Physical address 111 Alinga Street
Canberra ACT 2601

Postal address GPO Box 594
Canberra ACT 2601

Email s22(1)(a)(ii) @infrastructure.gov.au

7.1.4. The address for Qantas is:

Physical address 10 Bourke Road, Mascot NSW 2020

Postal address	As above
Email	s47F [REDACTED]@qantas.com.au

7.2. When effective

- 7.2.1. A notice is deemed to be effected:
- if delivered by hand* - upon delivery to the relevant address;
 - if sent by post* - upon delivery to the relevant address;
 - if transmitted electronically* - upon actual receipt by the addressee.
- 7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

- 8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.
- 8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

- 8.2.1. Qantas agrees, in carrying out the Activity, to comply with:
- all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - all applicable policies and procedures relating to work health and safety.
- 8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

- 8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal

Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Signatures

SIGNED for and on behalf of the Commonwealth of Australia represented by the Department of Infrastructure, Transport, Regional Development and Communications:

NICOLE PEARSON

Name of Delegate

s22(1)(a)(ii)

Signature of Delegate

In the presence of:

s22(1)(a)(ii)

Name of witness

s22(1)(a)(ii)

Signature of witness

EXECUTED on behalf of Qantas Airways Limited ACN 009 661 901 by its duly authorised representative:

s47F

Name of authorised representative

s47F

representative

s47F

Name of witness

s47F

Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights

Flight	Scheduled Departure Time (local time)	Point of Origin	Destination	Special Conditions
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	16 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	16 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	17 February 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	17 February 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	18 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	18 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil

3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.

- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

4. **Invoices**

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;
- c. the Agency's name and address;
- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

5. **Funding**

The Agency will pay to Qantas in respect of the Activity the following amounts (the **Funding**):

s47G(1)(a)

by no later than 7 days after the later of:

- c. the date on which the Flight has arrived at its Destination in Sydney or Brisbane (as applicable); and
- d. the date on which the Agency receives a Correctly Rendered Invoice in respect of the relevant amount.

Each of the above payments will be paid to the following Qantas account:

s47G(1)(a)

6. **Regulatory Requirements**

- 6.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:

- a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
- b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
- c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
- d. that all flight crew and cabin crew personnel hold appropriate licenses;
- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

7. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- slot availability and overflight approvals;
- confirmation of all Regulatory Approvals;
- crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- safety, security and operational risk assessment and sign off by Qantas;
- in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- ground handling and other service availability on Norfolk Island;
- determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

CONFIDENTIAL



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

AGREEMENT

**AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)**

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017
Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

25 February 2021

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SCHEDULE 1 DETAILS

15

AGREEMENT

AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS (NORFOLK ISLAND)

Date

This Agreement is made on 25 February 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications ABN 86 267 354 017** (the Agency)
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;

Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;
Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 4 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;

Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Jim Baldwin, Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are

Regulatory Approvals	covered by the Agency or the Commonwealth of Australia more broadly; means regulatory approvals required to be obtained from Australian or foreign governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;

- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.

2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.

2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

2.4.1. Qantas agrees to:

- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
- b. give that Auditor timely access to records; and
- c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
- d. provide all reasonable assistance to the Auditor,

to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.

2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:

- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement, and
- b. if it has failed to verify that information, the reasons for that failure; and
- c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
- d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:

- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
- b. to its Personnel to enable effective management or auditing of contract-related activities;
- c. to the responsible Minister;
- d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
- f. where authorised or required by law to be disclosed; or
- g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.

4.1.2. Subject to clause 4.2.2, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 5 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

- 4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

- 4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

- 4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

- 4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

- 4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination

5.1. Termination for fault

- 5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:
- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
 - b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.
- 5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

6. Force Majeure

6.1.1 Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, so far and so long as it is affected by the Force Majeure Event.

7. Notices

7.1. Format, addressing and delivery

7.1.1 A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

7.1.3. The address for the Agency is:

Physical address 111 Alinga Street
Canberra ACT 2601

Postal address GPO Box 594
Canberra ACT 2601

Email s22(1)(a)(ii) @infrastructure.gov.au

7.1.4. The address for Qantas is:

Physical address 10 Bourke Road, Mascot NSW 2020

Postal address As above

Email s47F [REDACTED]@qantas.com.au

7.2. When effective

- 7.2.1. A notice is deemed to be effected;
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon delivery to the relevant address;
 - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

- 8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.
- 8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

- 8.2.1. Qantas agrees, in carrying out the Activity, to comply with:
- a. all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - b. all applicable policies and procedures relating to work health and safety.
- 8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

- 8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal

Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1 In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Signatures

SIGNED for and on behalf of the Commonwealth of Australia represented by the Department of Infrastructure, Transport, Regional Development and Communications:

Nicole Pearson

Name of Delegate

s22(1)(a)(ii)

Signature of Delegate

In the presence of:

s22(1)(a)(ii)

Name of witness

s22(1)(a)(ii)

Signature of witness

EXECUTED on behalf of Qantas Airways Limited ACN 009 661 901 by its duly authorised representative:

s47F

Name of authorised representative

s47F

Signature of authorised representative

s47F

Name of witness

s47F

Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights

Flight	Scheduled Departure Time (local time)	Point of Origin	Destination	Special Conditions
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	26 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	26 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	27 February 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	27 February 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	27 February 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	27 February 2021	Norfolk Island (NLK)	Sydney (BNE)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	2 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	2 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil

BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	4 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	4 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil

3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

4. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;
- c. the Agency's name and address;
- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

5. Funding

The Agency will pay to Qantas in respect of the Activity the following amounts (the **Funding**):

s47G(1)(a)



by no later than 7 days after the later of:

- c. the date on which the Flight has arrived at its Destination in Sydney or Brisbane (as applicable); and
- d. the date on which the Agency receives a Correctly Rendered Invoice in respect of the relevant amount.

Each of the above payments will be paid to the following Qantas account:

s47G(1)(a)



6. Regulatory Requirements

- 6.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:
 - a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
 - b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
 - c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
 - d. that all flight crew and cabin crew personnel hold appropriate licenses;
 - e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
 - f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
 - g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

7. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- slot availability and overflight approvals;
- confirmation of all Regulatory Approvals;

- crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- safety, security and operational risk assessment and sign off by Qantas;
- in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- ground handling and other service availability on Norfolk Island;
- determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

CONFIDENTIAL



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

AGREEMENT

**AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)**

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017
Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

4 March 2021

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SCHEDULE 1 DETAILS

15

AGREEMENT**AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)****Date**

This Agreement is made on 5 March 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications** **ABN 86 267 354 017** (the Agency)¹¹¹
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions**1. Interpretation****1.1. Definitions**

1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;

Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;
Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 4 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;

Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Jim Baldwin, Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are

Regulatory Approvals	covered by the Agency or the Commonwealth of Australia more broadly; means regulatory approvals required to be obtained from Australian or foreign governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;

- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

- 2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.
- 2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

- 2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.
- 2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

- 2.4.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:

- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
- b. to its Personnel to enable effective management or auditing of contract-related activities;
- c. to the responsible Minister;
- d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
- f. where authorised or required by law to be disclosed; or
- g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.

4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 5 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination

5.1. Termination for fault

- 5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:
- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
 - b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.
- 5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

6. Force Majeure

6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, so far and so long as it is affected by the Force Majeure Event.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

7.1.3. The address for the Agency is:

Physical address	111 Alinga Street Canberra ACT 2601
Postal address	GPO Box 594 Canberra ACT 2601
Email	Nicole.pearson@infrastructure.gov.au

7.1.4. The address for Qantas is:

Physical address	10 Bourke Road, Mascot NSW 2020
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Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Signatures

UNITED Kingdom of Australia
Department
of Infrastructure, Transport, Regional Development, Communications and the Arts

s22(1)(a)(ii)

Signature of Delegate

s22(1)(a)(ii)

Signature of Witness

s22(1)(a)(ii)

Signature

on behalf of Qantas
A - 1 601

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Signature of authenticating person

s47F

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Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights


Flight	Scheduled Departure Time (local time)	Point of Origin	Destination	Special Conditions
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	1 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	1 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	3 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	3 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
SYD-NLK-BNE Flight				
Flight from Sydney to Norfolk Island	5 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	5 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
BNE-NLK-SYD Flight				
Flight from Brisbane to Norfolk Island	6 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	6 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil

SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	8 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	8 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	9 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	9 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	10 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	10 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	11 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	11 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil


3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

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s47G(1)(a)



- a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
- b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
- c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
- d. that all flight crew and cabin crew personnel hold appropriate licenses;
- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

7. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- slot availability and overflight approvals;
- confirmation of all Regulatory Approvals;
- crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- safety, security and operational risk assessment and sign off by Qantas;
- in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- ground handling and other service availability on Norfolk Island;
- determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

AGREEMENT

AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017
Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

12 March 2021

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SCHEDULE 1 DETAILS

15

AGREEMENT**AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS
(NORFOLK ISLAND)****Date**

This Agreement is made on 12 March 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications** **ABN 86 267 354 017** (the Agency)¹¹¹
2. **Qantas Airways Limited** **ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions**1. Interpretation****1.1. Definitions**

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Activity	means the provision of Flights;
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Agreement	means this document and includes any schedule;

Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;
Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 4 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;

Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Jim Baldwin, Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are

Regulatory Approvals	covered by the Agency or the Commonwealth of Australia more broadly; means regulatory approvals required to be obtained from Australian or foreign governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;

- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

- 2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.
- 2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

- 2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.
- 2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel Involved in performance of the Agreement.

2.4. Audit and access

- 2.4.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

- 3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:
- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. to its Personnel to enable effective management or auditing of contract-related activities;
 - c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
 - f. where authorised or required by law to be disclosed; or
 - g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.

4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 5 of Schedule 1.

4.2. **Security and Passenger Facilitation Costs**

4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. **Funding Cap**

4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. **Taxes and duties**

4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. **Termination**

5.1. **Termination for fault**

5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:

- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
- b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

6. Force Majeure

- 6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:
- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
 - b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,
- that obligation is suspended, so far and so long as it is affected by the Force Majeure Event.

7. Notices

7.1. Format, addressing and delivery

- 7.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

- 7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

- 7.1.3. The address for the Agency is:

Physical address	111 Alinga Street Canberra ACT 2601
Postal address	GPO Box 594 Canberra ACT 2601
Email	Nicole.pearson@infrastructure.gov.au

- 7.1.4. The address for Qantas is:

Physical address	10 Bourke Road, Mascot NSW 2020
-------------------------	---------------------------------

Postal address

As above

Email

s47F [REDACTED]@qantas.com.au

7.2. When effective

7.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address;
- c. *if transmitted electronically* - upon actual receipt by the addressee.

7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.

8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

8.2.1. Qantas agrees, in carrying out the Activity, to comply with:

- a. all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
- b. all applicable policies and procedures relating to work health and safety.

8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.

8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal

Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Signatures

SIGNED for and on behalf of the
Commonwealth of Australia
represented by the **Department
of Infrastructure, Transport,
Regional Development and
Communications:**

Name of Delegate

Signature of Delegate

In the presence of:

Name of witness

Signature of witness

EXECUTED on behalf of **Qantas
Airways Limited ACN 009 661
901** by its duly authorised
representative:

s47F _____

Name of authorised
representative

s47F _____

Name of witness

s47F _____

*Signature of authorised
representative*

s47F _____

Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights

Flight	Scheduled Departure Time (local time)	Point of Origin	Destination	Special Conditions
SYD-NLK-BNE Flight				
Flight from Sydney to Norfolk Island	12 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	12 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
BNE-NLK-SYD Flight				
Flight from Brisbane to Norfolk Island	13 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	13 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
SYD-NLK-SYD Flight				
Flight from Sydney to Norfolk Island	15 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	15 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	16 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	16 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil
SYD-NLK-SYD Flight				

Flight from Sydney to Norfolk Island	17 March 2021	Sydney (SYD)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Sydney	17 March 2021	Norfolk Island (NLK)	Sydney (SYD)	Nil
BNE-NLK-BNE Flight				
Flight from Brisbane to Norfolk Island	18 March 2021	Brisbane (BNE)	Norfolk Island (NLK)	Nil
Flight from Norfolk Island to Brisbane	18 March 2021	Norfolk Island (NLK)	Brisbane (BNE)	Nil

3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

4. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;
- c. the Agency's name and address;
- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

5. Funding

The Agency will pay to Qantas in respect of the Activity the following amounts (the **Funding**):

s47G(1)(a)



by no later than 7 days after the later of:

- d. the date on which the Flight has arrived at its Destination in Sydney or Brisbane (as applicable); and
- e. the date on which the Agency receives a Correctly Rendered Invoice in respect of the relevant amount.

Each of the above payments will be paid to the following Qantas account:

s47G(1)(a)



6. Regulatory Requirements

- 6.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:
 - a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
 - b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
 - c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
 - d. that all flight crew and cabin crew personnel hold appropriate licenses;
 - e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
 - f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and

- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

7. **Conditions Precedent**

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- slot availability and overflight approvals;
- confirmation of all Regulatory Approvals;
- crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- safety, security and operational risk assessment and sign off by Qantas;
- in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- ground handling and other service availability on Norfolk Island;
- determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

CONFIDENTIAL**Australian Government****Department of Infrastructure, Transport,
Regional Development and Communications****AGREEMENT**

AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017
Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

18 March 2021

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SCHEDULE 1 DETAILS

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Agreement for airline services (NORFOLK ISLAND)

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AGREEMENT**AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)****Date**

This Agreement is made on 18 March 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications** ABN 86 267 354 017 (the Agency)¹¹¹
2. **Qantas Airways Limited** ABN 16 009 661 901 ACN 009 661 901 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions**1. Interpretation****1.1. Definitions**

- 1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;
Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;

Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 7 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;
Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;

Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Jim Baldwin, Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are covered by the Agency or the Commonwealth of Australia more broadly;
Regulatory Approvals	means regulatory approvals required to be obtained from Australian or foreign

	governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1; Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;
- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;

- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

- 2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.
- 2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

- 2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.
- 2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

- 2.4.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

- 3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:
- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. to its Personnel to enable effective management or auditing of contract-related activities;
 - c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
 - f. where authorised or required by law to be disclosed; or
 - g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.

4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 8 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

- 4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

- 4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

- 4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.
- 4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination

5.1. Termination for fault

- 5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:
- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
 - b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.
- 5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

6. Force Majeure

6.1.1 Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, so far and so long as it is affected by the Force Majeure Event.

7. Notices

7.1. Format, addressing and delivery

7.1.1 A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

7.1.2 A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

7.1.3 The address for the Agency is:

Physical address	111 Alinga Street Canberra ACT 2601
Postal address	GPO Box 594 Canberra ACT 2601
Email	Nicole.pearson@infrastructure.gov.au

7.1.4 The address for Qantas is:

Physical address	10 Bourke Road, Mascot NSW 2020
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Postal address As above

Email s47F [REDACTED]@qantas.com.au

7.2. When effective

- 7.2.1. A notice is deemed to be effected:
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon delivery to the relevant address;
 - c. *if transmitted electronically* - upon actual receipt by the addressee.
- 7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

- 8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.
- 8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

- 8.2.1. Qantas agrees, in carrying out the Activity, to comply with:
- a. all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - b. all applicable policies and procedures relating to work health and safety.
- 8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

- 8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal

Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Signatures

SIGNED for and on behalf of the
Commonwealth of Australia
represented by the **Department
of Infrastructure, Transport,
Regional Development and
Communications:**

Nicole PARSON

Name of Delegate

s22(1)(a)(ii)

Signature of Delegate

In the presence of:

s22(1)(a)(ii)

Name of witness

s22(1)(a)(ii)

Signature of witness

EXECUTED on behalf of **Qantas
Airways Limited ACN 009 661
901** by its duly authorised
representative:

s47F

Name of authorised
representative

s47F

Signature of authorised
representative

s47F

Name of witness

s47F

Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights

The supplier will provide six (6) flights per week to Norfolk Island. This will comprise of:

- a. 3 flights per week from Brisbane on Tuesday, Thursday and Saturday;
- b. 3 flights per week from Sydney on Monday, Friday and Sunday.

Changes to the service, frequency and capacity may be made by mutual agreement between the parties.

All passengers will be subject to Qantas' conditions of carriage. Qantas will operate a B737-8 which is configured to uplift up to 1.5 Tonnes per flight (including luggage and freight).

Service frequency for both routes for the term of this agreement are shown in the table below:

Service schedule - Sydney					
Departure	Arrival	Flight Number	Equip	Departure Time	Arrival Time
SYDNEY	NORFOLK ISLAND	179	73HH	9:55	13:35
NORFOLK ISLAND	SYDNEY	180	73HH	14:45	16:35

Service schedule - Brisbane					
Departure	Arrival	Flight Number	Equip	Departure Time	Arrival Time
BRISBANE	NORFOLK ISLAND	183	73HH	9:30	13:45
NORFOLK ISLAND	BRISBANE	184	73HH	14:45	15:10

3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

4. Tariff

Qantas assumes full responsibility for inventory and revenue management of the service.

Qantas will integrate this service to Norfolk Island into:

- a. Qantas' marketing activities, including Qantas Frequent Flyer programme; and
- b. other Australian Government tourism packages.

5. Term

This contract will commence on 19 March 2021 and ends 19 June 2021 inclusive, unless the Agency serves a notice to extend at least 6 weeks prior to that date.

The Agency may, in its absolute discretion, extend the contract for a further three months on a rolling basis, by giving Qantas at least 6 weeks notice.

6. Contractual arrangements

For the duration of this agreement, the Agency will contract exclusively with Qantas for the delivery of passenger services to Norfolk Island.

Phasing out arrangements should commence at least 6 weeks prior to the expiration of the Agreement (including any extended term).

7. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;
- c. the Agency's name and address;
- d. the date of issue of the tax invoice;

- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

8. Funding

Qantas will provide the Agency with a Correctly Rendered Invoice for the Flights it has delivered to Norfolk Island. The Agency will pay to Qantas in respect of the Activity the following amounts (the **Funding**):

s47G(1)(a)

- c. \$by no later than 7 days after the later of:
 - d. the date on which the Flight has arrived at its Destination in Sydney or Brisbane (as applicable); and
 - e. the date on which the Agency receives a Correctly Rendered Invoice in respect of the relevant amount.

Each of the above payments will be paid to the following Qantas account:

s47G(1)(a)

9. Regulatory Requirements

- 9.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:
 - a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
 - b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
 - c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
 - d. that all flight crew and cabin crew personnel hold appropriate licenses;

- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

10. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- a. slot availability and overflight approvals;
- b. confirmation of all Regulatory Approvals;
- c. crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- d. safety, security and operational risk assessment and sign off by Qantas;
- e. in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- f. ground handling and other service availability on Norfolk Island;
- g. determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

11. Termination

Where Qantas holds any bookings for travel after the expiration or termination of the Agreement, Qantas will manage such bookings by:

- a. providing the services on a commercial basis;
- b. providing the customers with a refund; or
- c. making arrangements for travel on another airline.

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

CONFIDENTIAL**Australian Government****Department of Infrastructure, Transport,
Regional Development and Communications****AGREEMENT**

AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017

Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

20 May 2021

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SCHEDULE 1 DETAILS

AGREEMENT**AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)****Date**

This Agreement is made on 20 May 2021.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications** ABN 86 267 354 017 (the Agency) 111
2. **Qantas Airways Limited** ABN 16 009 661 901 ACN 009 661 901 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions**1. Interpretation****1.1. Definitions**

1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;
Airport(s)	means the airports at the Point of Origin and Destination referred to in Schedule 1 and any other airport used in the provision of the Activity;

Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means the date on which this Agreement is made;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 7 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 7 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;
Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas;

Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 5 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Laws	means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: <ul style="list-style-type: none"> (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and (b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of the Schedule;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Ben Walter, A/g Assistant Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are covered by the Agency or the Commonwealth of Australia more broadly;
Regulatory Approvals	means regulatory approvals required to be obtained from Australian or foreign

	governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 6 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;
- g. the Schedule forms part of this Agreement;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;

- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. The Term is the period commencing on the Commencement Date and expiring on the End Date.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide

in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

- 2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.
- 2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

- 2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.
- 2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

- 2.4.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:

- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
- b. to its Personnel to enable effective management or auditing of contract-related activities;
- c. to the responsible Minister;
- d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
- f. where authorised or required by law to be disclosed; or
- g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.

4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 8 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination

5.1. Termination for fault

5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:

- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
- b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

s22(1)(a)(ii)

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Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

Oliver Holm

s22(1)(a)(ii)

s22(1)(a)(ii)

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SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means the date on which the Flights are completed.

2. Flights

The supplier will provide six (6) flights per week to Norfolk Island. This will comprise of:

- a. 3 flights per week from Brisbane on Tuesday, Thursday and Saturday;
- b. 3 flights per week from Sydney on Monday, Friday and Sunday.

Changes to the service, frequency and capacity may be made by mutual agreement between the parties.

All passengers will be subject to Qantas' conditions of carriage. Qantas will operate a B737-8 which is configured to uplift up to 1.5 Tonnes per flight (including luggage and freight).

Service frequency for both routes for the term of this agreement are shown in the table below:

Service schedule - Sydney					
Departure	Arrival	Flight Number	Equip	Departure Time	Arrival Time
SYDNEY	NORFOLK ISLAND	179	73HH	9:55	13:35
NORFOLK ISLAND	SYDNEY	180	73HH	14:45	16:35

Service schedule - Brisbane					
Departure	Arrival	Flight Number	Equip	Departure Time	Arrival Time
BRISBANE	NORFOLK ISLAND	183	73HH	9:30	13:45
NORFOLK ISLAND	BRISBANE	184	73HH	14:45	15:10

3. Data

- 3.1. The number of Passengers who travelled on the Flight.
- 3.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 3.3. The composition of the Freight which was carried on the Flight.
- 3.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 3.5. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

4. Tariff

- 4.1. Qantas assumes full responsibility for inventory and revenue management of the service.
- 4.2. Qantas will integrate this service to Norfolk Island into:
 - a. Qantas' marketing activities, including Qantas Frequent Flyer programme; and
 - b. other Australian Government tourism packages.

5. Term

- 5.1. This contract will commence on 20 June 2021 and ends 29 August 2021 inclusive, unless the Agency serves a notice to extend at least 6 weeks prior to that date.
- 5.2. The Agency may, in its absolute discretion, extend the contract for a further three months on a rolling basis, by giving Qantas at least 6 weeks' notice.

6. Contractual arrangements


- 6.1. For the duration of this agreement, the Agency will contract exclusively with Qantas for the delivery of passenger services to Norfolk Island.
- 6.2. Phasing out arrangements should commence at least 6 weeks prior to the expiration of the Agreement (including any extended term).

7. Invoices


To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;

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s47G(1)(a)

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- c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
- d. that all flight crew and cabin crew personnel hold appropriate licenses;
- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

10. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- a. slot availability and overflight approvals;
- b. confirmation of all Regulatory Approvals;
- c. crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- d. safety, security and operational risk assessment and sign off by Qantas;
- e. in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- f. ground handling and other service availability on Norfolk Island;
- g. determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

11. Termination

Where Qantas holds any bookings for travel after the expiration or termination of the Agreement, Qantas will manage such bookings by:

- a. providing the services on a commercial basis;
- b. providing the customers with a refund; or
- c. making arrangements for travel on another airline.

CONFIDENTIAL**Australian Government****Department of Infrastructure, Transport,
Regional Development and Communications****AGREEMENT**

AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017

Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

20 August 2021

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AGREEMENT

AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Date

This Agreement is made on **Friday, 20 August 2021**.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications ABN 86 267 354 017** (the Agency)
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions

1. Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

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Auditor	means a registered company auditor within the meaning of the <i>Corporations Act 2001</i> (Cth);
Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means 30 August 2021;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 8 of the Schedule;
Correctly Rendered Invoice	has the meaning given in Item 5 of the Schedule;
Data	means the data detailed in Item 3 of the Schedule;
Destination	means the point of destination for a Flight as specified in Item 2 of the Schedule;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;
End Date	has the meaning given to that term in Item 1.1 of the Schedule;
Flights	means the flight or flights detailed in Item 2 of the Schedule;
Force Majeure Event	means an event not within the reasonable control of Qantas which, for the avoidance of doubt, does not include strikes, lock-outs

	or other industrial disputes which relate only to Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Funding	has the meaning given to that term in Item 6 of the Schedule;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
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Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
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Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas's Regular Flights	means a flight conducted by Qantas on a commercial basis where no costs are covered by the Agency or the Commonwealth of Australia more broadly;

Regulatory Approvals	means regulatory approvals required to be obtained from Australian governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 7 of the Schedule;
Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight, and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Schedule	means Schedule 1: Details to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of the Schedule; and
Term	has the meaning given to that term in clause 1.4.2.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to an Item is a reference to an Item in the Schedule;
- g. the Schedule forms part of this Agreement;

- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of the Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. Subject to clause 1.4.3, the Term is the period commencing on the Commencement Date and expiring on the End Date.
- 1.4.3. The Agency may, in its absolute discretion, extend the Term for up to a further three months up to a maximum Term of six months, by giving Qantas at least 6 weeks' notice.

2. Parties Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time; and
 - c. operate each Flight in compliance with any Special Conditions.
- 2.1.2. The Agency acknowledges and agrees that the Flights will not be to the same standards nor in a manner comparable to Qantas' Regular Flights in terms of

Passenger services provided on board (including in respect of in-flight food and beverages). In particular, Qantas may, at their discretion, choose not to provide in-flight entertainment and choose not to apply the Qantas Frequent Flyer program to the Flights.

- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and
 - b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.
- 2.1.9. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.10. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly

disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticket and Freight Pricing

2.2.1. Qantas agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount that represents a reasonable fare from the Point of Origin to the Destination as agreed between the parties from time to time.

2.2.2. Qantas agrees that it will charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency.

2.3. Records

2.3.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue and the costs incurred by Qantas in undertaking the Activity to be determined.

2.3.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.4. Audit and access

2.4.1. Qantas agrees to:

- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
- b. give that Auditor timely access to records; and
- c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
- d. provide all reasonable assistance to the Auditor,

to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.

2.4.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:

- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
- b. if it has failed to verify that information, the reasons for that failure; and
- c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
- d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,

provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the terms of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement).

3.2. Confidential Information of Qantas

- 3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement and any information including Data received by a party in connection with this Agreement:
- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. to its Personnel to enable effective management or auditing of contract-related activities;
 - c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
 - f. where authorised or required by law to be disclosed; or
 - g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

- 4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.
- 4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Funding in accordance with Item 6 of Schedule 1.

4.2. Security and Passenger Facilitation Costs

4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

4.4. Taxes and duties

4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.

4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.

4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination and expiry

5.1. Termination for fault

5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:

- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
- b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

5.2. Bookings after termination of expiry

5.2.1. Where Qantas holds any bookings for travel on Flights after the expiry or earlier termination of this Agreement, Qantas will manage such bookings by providing the services to the Passengers in accordance with a subsequent agreement between the parties in relation to the Flights, or if there is no such agreement either:

- i. providing the services to Passengers on a commercial basis, at no additional cost to that provided for at the time of the booking;
- ii. providing the Passengers with a full refund; or
- iii. making arrangements for Passengers to travel on an equivalent flight operated by another airline at no additional cost to the Passengers or the Commonwealth of Australia.

6. Force Majeure

6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, and subject to clause 6.1.2 no amount will be due and payable by the Agency under this Agreement in respect of that obligation, so far and so long as it is affected by the Force Majeure Event.

6.1.2. Where the Agency notifies Qantas that a Flight will not proceed (**Cancelled Flight**) Qantas must not charge the Agency in respect of that Flight unless the notification is effected less than 4 weeks prior to the Scheduled Departure Time.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand; or
- b. signed by the person giving the notice and sent by pre-paid post; or

c. transmitted electronically by the person giving the notice by electronic mail.

7.1.3. The address for the Agency is:

Physical address 111 Alinga Street
Canberra ACT 2601

Postal address GPO Box 594
Canberra ACT 2601

Email s22(1)(a)(ii) @infrastructure.gov.au

7.1.4. The address for Qantas is:

Physical address 10 Bourke Road, Mascot NSW 2020

Postal address As above

Email s47F @qantas.com.au

7.2. When effective

7.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address;
- c. *if transmitted electronically* - upon actual receipt by the addressee.

7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.

8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

8.2.1. Qantas agrees, in carrying out the Activity, to comply with:

- a. all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
- b. all applicable policies and procedures relating to work health and safety.

8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.

8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:

- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Agency.

8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. Illegal Workers

8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.5.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.6. Variation

8.6.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.9. Applicable law

8.9.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.9.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.10. Counterparts

8.10.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

8.11. Electronic execution

8.11.1. The Agency and Qantas acknowledge that, prior to executing this Agreement, each party agreed that the Agreement could be conveyed to them by email and then electronically signed and returned to them or their representative and that

an email copy of the executed Agreement signed in this way would be valid and effectual as if the original signatures were recorded on it.

- 8.11.2. The parties agree to provide all necessary documentation and assistance to each other to confirm the power and authority of the relevant delegate or authorised representative signing this Agreement on its behalf.

Signatures

SIGNED for and on behalf of the
Commonwealth of Australia
represented by the **Department
of Infrastructure, Transport,
Regional Development and
Communications:**

s22(1)(a)(ii) [Redacted]

Name of Delegate

s22(1)(a)(ii) [Redacted]

Signature of Delegate

In the presence of:

s22(1)(a)(ii) [Redacted]

Name of witness

s22(1)(a)(ii) [Redacted]

Signature of witness

EXECUTED on behalf of **Qantas
Airways Limited ACN 009 661
901** by its duly authorised
representative:

s47F [Redacted]

Name of authorised
representative

s47F [Redacted]

representative

s47F [Redacted]

Name of witness

s47F [Redacted]

Signature of witness

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means 30 October 2021.

2. Flights

Qantas will provide six (6) flights per week to Norfolk Island. This will comprise:

- a. 3 flights per week from Brisbane on Tuesday, Thursday and Saturday;
- b. 3 flights per week from Sydney on Monday, Friday and Sunday,

in accordance with the Service Schedules detailed below.

Qantas will operate a B737-8, which is configured to uplift up to 1.5 Tonnes per flight (including luggage and freight).

Service Schedule - Sydney						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Sydney Kingsford Smith Airport	SYDNEY	NORFOLK ISLAND	179	Operated using a B737-8 (refer above for the configuration)	9:55	13:35
Norfolk Island International Airport	NORFOLK ISLAND	SYDNEY	180	Operated using a B737-8 (refer above for the configuration)	14:45	16:35

Service Schedule - Brisbane						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Brisbane International Airport	BRISBANE	NORFOLK ISLAND	183	Operated using a B737-8 (refer above for the configuration)	9:30	13:45
Norfolk Island International Airport	NORFOLK ISLAND	BRISBANE	184	Operated using a B737-8 (refer above for the configuration)	14:45	15:10

Data

- 2.1. The number of Passengers who travelled on the Flight.
- 2.2. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination
- 2.3. The composition of the Freight which was carried on the Flight.
- 2.4. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 2.5. The details of any Flight for which Qantas may charge under clause 6.1.2.
- 2.6. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

3. Tariff

- 3.1. Qantas assumes full responsibility for inventory and revenue management of the Flights.
- 3.2. Qantas will integrate the Flights to and from Norfolk Island into:
 - a. Qantas' marketing activities, including Qantas Frequent Flyer programme; and
 - b. other Australian Government tourism packages.

4. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas's name and ABN;
- c. the Agency's name and address;
- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

5. Funding

Qantas will provide the Agency with a Correctly Rendered Invoice for the Flights it has delivered to Norfolk Island and for any costs that may be charged by Qantas in accordance with clause 6.1.2. The Agency will pay to Qantas in

respect of the Activity the following amounts (the **Funding**):

s47G(1)(a)

by no later than 7 days after the later of:

- e. the date on which the Flight has arrived at its Destination in Sydney or Brisbane (as applicable);
- f. the date on which the Agency has notified Qantas under clause 6.1.2; and
- g. the date on which the Agency receives a Correctly Rendered Invoice in respect of the relevant amount.

Each of the above payments will be paid to the following Qantas account:

s47G(1)(a)

6. Regulatory Requirements

6.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:

- a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
- b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
- c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
- d. that all flight crew and cabin crew personnel hold appropriate licenses;
- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;

- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

7. Conditions Precedent

The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- a. slot availability and overflight approvals;
- b. confirmation of all Regulatory Approvals;
- c. crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces;
- d. safety, security and operational risk assessment and sign off by Qantas;
- e. in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
- f. ground handling and other service availability on Norfolk Island;
- g. determination of final LOPA for onboard social distancing requirements.

The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.



Australian Government

Department of Infrastructure, Transport, Regional Development and Communications

AGREEMENT

AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017

Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

8 December 2021

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AGREEMENT**AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)****Date**

This Agreement is made on **8 December 2021**.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications ABN 86 267 354 017** (the Agency)
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions**1. Interpretation****1.1. Definitions**

- 1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;
Airport(s)	means the airports at the Point of Origin and Destination referred to in Item 2 of Schedule 1 and any other airport used in the provision of the Activity;

Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Average Fare	means the average of all fares charged by Qantas to Passengers in performing the Activity (including GST), but does not include credit card charges and all third party levies, taxes and charges, including airport and departure taxes;
Baseline Costs	means the operational costs for Flights, as set out in Item 1.3 of Schedule 2;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Cancellation Fee	means the amount calculated in accordance with Item 1.4 of Schedule 2;
Cancelled Flight	has the meaning given to that term in clause 6.1.2;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means 12 December 2021;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 11 of Schedule 1;
Correctly Rendered Invoice	has the meaning given in Item 9 of Schedule 1;
Data	means the data detailed in Item 6 of Schedule 1;
Destination	means the point of destination for a Flight as specified in Item 2 of Schedule 1;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;

End Date	has the meaning given to that term in Item 1.1 of Schedule 1;
Flights	means the flight or flights detailed in Item 2 of Schedule 1;
Force Majeure Event	means an event not within the reasonable control of Qantas which, for the avoidance of doubt, does not include protected industrial action which relates only to Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Frequent Flyer Redemption	means the value of the Qantas Points determined in accordance with clause 2.2.4;
Funding	has the meaning given to that term in Item 1.1.1 of Schedule 2;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Guiding Principles on Business and Human Rights	means the United Nations' <i>Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework</i> available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf .
Key Performance Indicator	means one or more of the key performance indicators included in the table at Item 5 of Schedule 1;
Laws	means all applicable laws of the Commonwealth of Australia or of a State or Territory;
Modern Slavery	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and

	(b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of Schedule 1;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Ben Walter, A/g Assistant Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas' Regular Flights	means a regular domestic flight conducted by Qantas on a commercial basis where no costs are covered by the Agency or the Commonwealth of Australia more broadly;
Quarter	means each 3 month period during the Term, commencing 1 October, 1 January, 1 April and 1 July except for: <ul style="list-style-type: none"> (a) the first Quarter which commences on the Commencement Date and ends on whichever of the following dates is the first to occur after the Commencement Date: 31 December, 31 March, 30 June and 30 September; and (b) the last Quarter which ends on the date of expiry or earlier termination of this Agreement and commences on whichever of the following dates is the first to occur prior to the date of expiry or earlier termination of this Agreement: 1 October, 1 January, 1 April and 1 July;
Regulatory Approvals	means regulatory approvals required to be obtained from Australian governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 10 of Schedule 1;
Reports	means the reports detailed in Item 7 of Schedule 1;

Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight (including Frequent Flyer Redemptions), and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Route	means a route detailed in Item 2 of Schedule 1 from the Point of Origin to the Destination and return;
Schedule 1	means Schedule 1: Details to this Agreement;
Schedule 2	means Schedule 2: Funding to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of Schedule 1;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of Schedule 1;
Target Average Fare	means the Target Average Fare for each year of the Term for economy and business class fares respectively, to be determined pursuant to clause 2.2.1;
Term	has the meaning given to that term in clause 1.4.2; and

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;

- e. a reference to dollars is a reference to Australian dollars;
- f. Schedule 1 and Schedule 2 form part of this Agreement;
- g. a reference to an Item is a reference to an Item in the relevant Schedule;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of a Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. Subject to clause 1.4.3, the Term is the period commencing on the Commencement Date and expiring on the End Date.
- 1.4.3. The Agency may, in its absolute discretion, extend the Term for up to a further six months, by giving Qantas at least 9 weeks' notice.

2. Parties' Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time;

- c. operate each Flight in compliance with any Special Conditions;
 - d. ensure each Flight complies with the requirements set out in Item 3 of Schedule 1; and
 - e. comply with the requirements set out in Item 8 of Schedule 1.
- 2.1.2. The Agency acknowledges and agrees that Qantas may apply the Qantas Frequent Flyer program to the Flights.
- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will comply with any written direction from the Agency to cancel Flights that it is otherwise required to conduct under the terms of this Agreement and will use reasonable endeavours to operate additional Flights requested by the Agency, provided 7 days' prior notice is provided to Qantas.
- 2.1.9. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and

- b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.

- 2.1.10. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.11. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticketing and Freight

- 2.2.1. The parties agree that:

- a. as at the Commencement Date the Target Average Fare for each year of the Term will be ^{s47G(1)(a)} for economy class (including GST) and ^{s47G(1)(a)} _{s47G(1)(a)} for business class (including GST);
- b. the Target Average Fare will not change unless agreed by the parties; and
- c. the Agency will not unreasonably withhold its agreement to a change to the Target Average Fare for one or more years of the Term proposed by Qantas, having regard to the objective of maximising Revenue, the predicted future demand and other factors agreed by the parties to be relevant at the time.

- 2.2.2. Qantas agrees that it will:

- a. charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency;
- b. ensure Flights in-bound to Norfolk Island each Quarter, transport an amount of freight which meets or exceeds the sum of the minimum Freight capacity for all in-bound Flights, as set out in Item 4 of Schedule 1, operated during the same period, subject to demand.

- 2.2.3. Qantas must:

- a. publish and maintain on its website a complete schedule of all Flights for the next 330 days, which schedule must be consistent with the schedule for Flights required under this Agreement;
- b. ensure the Flights published on the complete schedule are at all times during the Term available to be booked on multiple platforms (including qantas.com, in a number of international currencies and all major third party global distribution systems); and
- c. put in place all necessary arrangements to ensure that bookings made for Flights scheduled to operate after the Term are managed in accordance with clause 5.2.1.a.

- 2.2.4. In relation to Frequent Flyer Redemptions:
- a. Revenue for a Flight will be taken to include the Australian dollar value of Qantas Points earned through the Qantas Frequent Flyer Program that Qantas accepts in consideration of Passengers travelling on that Flight for up to a maximum of six Passengers on each Flight.
 - b. The value of a Qantas Point will be ^{s47G(1)(a)} or any higher amount which represents the average gift card value that a Qantas Point is able to be redeemed for under the Qantas Frequent Flyer Program.
 - c. Where Qantas accepts Qantas Points earned through the Qantas Frequent Flyer Program in consideration of Passengers travelling on a Flight, from Passengers in excess of the maximum numbers specified in clause 2.2.4a (**Excess Frequent Flyer Passengers**), Revenue for that Flight will be taken to include for each Excess Frequent Flyer Passenger:
 - i. the average of Revenue received by Qantas in respect of each Passenger on the Flight who did not use Qantas Points in consideration for travelling on the Flight; or
 - ii. if all Passengers on the Flight did use Qantas Points in consideration for travelling on the Flight, the average of Revenue received by Qantas in respect of each Passenger on each Flight on the same Route during the same Quarter as the Flight who did not use Qantas Points in consideration for travelling on the Flight.

- 2.2.5. Qantas must ensure that the records it is required to maintain under clause 2.4.1 and the Data and Reports it is required to provide the Agency under Items 6 and 7 of Schedule 1 will clearly identify where Qantas has accepted Qantas Points in consideration of a Passenger travelling on a Flight and include all details reasonably required by the Agency to verify the calculations of the dollar value of those Qantas Points and the Revenue attributed to each passenger from whom Qantas has accepted Qantas Points in consideration of travelling on a Flight.

2.3. Performance Standards

- 2.3.1. Qantas must at all times meet or exceed the KPIs (if any) set out in Item 5 of Schedule 1.
- 2.3.2. Qantas must measure and report Qantas' performance against the KPIs in accordance with the requirements specified in Item 5 of Schedule 1 using appropriate measurement and monitoring tools and procedures.
- 2.3.3. Qantas must provide the Agency with information and access to those tools and procedures to allow the Agency to verify that they accurately measure Qantas' performance.
- 2.3.4. If Qantas fails to meet any KPI, Qantas must inform the Agency, promptly investigate and report on the underlying causes of the failure to meet the KPI, correct the problem and take reasonable steps, to minimise the impact of the problem and prevent it from recurring.

2.4. Records

- 2.4.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue, the costs incurred by Qantas in undertaking the Activity and Qantas' compliance with the Key Performance Indicators to be determined.
- 2.4.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.5. Audit and access

- 2.5.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.5.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,
- provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality

3.1. Confidentiality

- 3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the following provisions of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement):
- a. Clause 2.2.4;
 - b. Item 1.3 of Schedule 2;

- c. Item 1.4 of Schedule 2; and
- d. Item 1.5 of Schedule 2.

3.2. Confidential Information

- 3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement (including the provisions specified at clause 3.1.1. above) and any information including Data and Reports received by a party in connection with this Agreement:
- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. to its Personnel to enable effective management or auditing of contract-related activities;
 - c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
 - f. where authorised or required by law to be disclosed; or
 - g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

- 4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.
- 4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice, the Data and the Reports, the Agency agrees to pay to Qantas the Funding in accordance with Item 1 of Schedule 2

4.2. Security and Passenger Facilitation Costs

- 4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

- 4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection

with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

- 4.3.2. The Agency's total liability to Qantas (including Qantas Group Companies) for the Funding will not exceed ^{s47G(1)(a)} in the aggregate in respect of the Activity undertaken under the Agreement, subject to any additional Flights directed by the Agency under clause 2.1.8.

4.4. Taxes and duties

- 4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.
- 4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination and expiry

5.1. Termination for fault

- 5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:
- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
 - b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.
- 5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

5.2. Transition Out

- 5.2.1. In the event of expiry or earlier termination of this Agreement, Qantas must:
- a. where Qantas holds any bookings for travel on Flights after the expiry or earlier termination of this Agreement, manage such bookings by providing

the services to the Passengers in accordance with a subsequent agreement between the parties in relation to the Flights, or if there is no such agreement either:

- i. providing the Passengers with a full refund;
 - ii. transferring those bookings to an alternative supplier nominated by the Agency by the date required by the Agency.
- b. comply with any requirements set out in Item 12 of Schedule 1; and
 - c. provide further, reasonable assistance to the Agency if requested by the Agency, to facilitate the transition of the Activity to an alternative supplier or to the Agency with minimal disruption to the Agency.

5.2.2. The provisions of this clause 5.2 survive expiry or the earlier termination of this Agreement.

6. Force Majeure

6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, and subject to clause 6.1.2 no amount will be due and payable by the Agency under this Agreement in respect of that obligation, so far and so long as it is affected by the Force Majeure Event.

6.1.2. Where the Agency directs Qantas to cancel a Flight under clause 2.1.8 (**Cancelled Flight**) Qantas must not charge the Agency in respect of that Flight unless the direction is issued less than 4 weeks prior to the Scheduled Departure Time, in which case the Cancellation Fee will apply in accordance with Schedule 2.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice or direction under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

- 7.1.2. A notice or direction is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail.

- 7.1.3. The address for the Agency is:

Physical address	111 Alinga Street Canberra ACT 2601
Postal address	GPO Box 594 Canberra ACT 2601
Email	s22(1)(a)(ii) @infrastructure.gov.au

- 7.1.4. The address for Qantas is:

Physical address	10 Bourke Road, Mascot NSW 2020
Postal address	As above
Email	s47F @qantas.com.au

7.2. When effective

- 7.2.1. A notice or direction is deemed to be effected:
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon delivery to the relevant address;
 - c. *if transmitted electronically* - upon actual receipt by the addressee.

- 7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

- 8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.
- 8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

- 8.2.1. Qantas agrees, in carrying out the Activity, to comply with:
- a. all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - b. all applicable policies and procedures relating to work health and safety.
- 8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

- 8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:
- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
 - b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.
- 8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:
- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;

- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
 - c. take any other action as reasonably directed by the Agency.
- 8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

- 8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

- 8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. **Child safety**

- 8.5.1. If any part of the Activity involves Qantas employing or engaging a person (whether as an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Activity or any part of the Activity, Qantas agrees:
- a. to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Activity, including mandatory reporting and working with children checks however described; and
 - b. if requested, provide the Agency at Qantas' cost, an annual statement of compliance with this clause, in such form as may be specified by the Agency.
- 8.5.2. When child safety obligations may be relevant to a subcontract, Qantas must ensure that any subcontract entered into by Qantas for the purposes of fulfilling Qantas' obligations under the contract imposes on the subcontractor the same obligations regarding child safety that Qantas has under the Agreement. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

8.6. **Modern slavery**

- 8.6.1. Qantas must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Activity.
- 8.6.2. If at any time Qantas becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, Qantas must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

8.7. Waiver

8.7.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.

8.7.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.8. Variation

8.8.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.9. Assignment

8.9.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.10. Survival

8.10.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.11. Applicable law

8.11.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

8.11.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.12. Counterparts

8.12.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

8.13. Electronic execution

8.13.1. The Agency and Qantas acknowledge that, prior to executing this Agreement, each party agreed that the Agreement could be conveyed to them by email and then electronically signed and returned to them or their representative and that an email copy of the executed Agreement signed in this way would be valid and effectual as if the original signatures were recorded on it.

8.13.2. The parties agree to provide all necessary documentation and assistance to each other to confirm the power and authority of the relevant delegate or authorised representative signing this Agreement on its behalf.

Signatures

SIGNED for and on behalf of the Commonwealth of Australia represented by the Department of Infrastructure, Transport, Regional Development and Communications:

Rachel Bacon
Name of Delegate

s22(1)(a)(ii)
Signature of Delegate

9/12/2021

In the presence of:

s22(1)(a)(ii)
Name of witness

s22(1)(a)(ii)
Signature of witness

9/12/2021

EXECUTED on behalf of Qantas Airways Limited ACN 009 661 901 by its duly authorised representative:

s47F
Name of authorised representative

s47F
Signature of authorised representative

s47F
Name of witness

s47F
Signature of witness

08/12/2021

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means 30 June 2022.

2. Flights

2.1. Subject to any direction from the Agency in accordance with clause 2.1.8 of the Agreement, from 12 December 2021 to 31 March 2022, Qantas will conduct six (6) flights per week to Norfolk Island that are regular, return passenger transport and freight services with no intermediary stops. This will comprise:

- a. 3 flights per week from Brisbane on Tuesday, Thursday and Saturday;
 - b. 3 flights per week from Sydney on Monday, Friday and Sunday,
- in accordance with the Service Schedule detailed below.

Service Schedule - Sydney						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Sydney Kingsford Smith Airport	SYDNEY	NORFOLK ISLAND	179	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:55	13:35
Norfolk Island International Airport	NORFOLK ISLAND	SYDNEY	180	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	14:45	16:35

Service Schedule - Brisbane						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Brisbane International Airport	BRISBANE	NORFOLK ISLAND	183	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:30	13:45
Norfolk Island International Airport	NORFOLK ISLAND	BRISBANE	184	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	14:45	15:10

2.2. Subject to any direction from the Agency in accordance with clause 2.1.8 of the Agreement, from 1 April 2022 to 30 June 2022, Qantas will conduct four (4) flights per week to Norfolk Island that are regular, return passenger transport and freight services with no intermediary stops. This will comprise:

- a. 2 flights per week from Brisbane on Tuesday and Saturday;
- b. 2 flights per week from Sydney on Monday and Friday

in accordance with the Service Schedule detailed below:

Service Schedule - Sydney						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Sydney Kingsford Smith Airport	SYDNEY	NORFOLK ISLAND	179	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:55	13:35
Norfolk Island International Airport	NORFOLK ISLAND	SYDNEY	180	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per	14:45	16:35

				flight. Checked baggage must be transported on each flight.		
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Service Schedule - Brisbane						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Brisbane International Airport	BRISBANE	NORFOLK ISLAND	183	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:30	13:45
Norfolk Island International Airport	NORFOLK ISLAND	BRISBANE	184	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per	14:45	15:10

				flight. Checked baggage must be transported on each flight.		
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3. Service standards

- 3.1. Qantas will provide the Flights to the same standard as Qantas' Regular Flights in terms of Passenger services (including in respect of in-flight food, beverages, in-flight entertainment, access to Qantas clubs or lounges).
- 3.1.1. Qantas must provide each Passenger with a minimum of 30 kilograms of checked baggage (with no limit on the number of items that Passengers can check in for a Flight).
- 3.2. All Passengers must have the option to purchase additional checked baggage in the amounts and at the rates specified in the table below.

<u>Additional Checked Baggage Allowance</u>	<u>Rate (GST inclusive)</u>
Up to 15 kilograms	\$50.00
25 kilograms	\$190.00
35 kilograms	\$330.00
Over 35 kilograms	\$330.00 plus \$35.00 per additional kilogram over 35 kilograms <i>*For example, if a passenger purchased 40 kilograms of additional baggage, the applicable charge for that baggage would be \$330.00 plus \$175.00 (equating to \$35.00 for each additional kilogram over 35 kilograms)</i>

4. Quarterly Minimum Freight Capacity Averages

- 4.1. Flights in-bound to Norfolk Island which transport a number of Passengers equal to or more than 75 percent of the maximum Passenger capacity of the Flight must, on average for each Quarter, have a minimum Freight capacity of 500 kilograms.

- 4.2. Flights in-bound to Norfolk Island which transport a number of Passengers equal to or more than 25 percent of the maximum Passenger capacity of the Flight (but lesser than 75 percent) must, on average for each Quarter, have a minimum Freight capacity of 1,000 kilograms.
- 4.3. Flights in-bound to Norfolk Island which transport a number of Passengers equivalent to less than 25 percent of the maximum Passenger capacity of the Flight must, on average for each Quarter, have a minimum Freight capacity of 1,500 kilograms.

5. Key Performance Indicators (s)

- 5.1 Qantas must comply with the following KPIs:

Table: Key Performance Indicators
<p>On-time Performance: The average of on-time departures for each Quarter, defined as within fifteen minutes of Scheduled Departure Times, must be at least eighty-five percent. This KPI will not apply to delays caused by Force Majeure Events.</p>
<p>Flight Cancellations: In any Quarter, the number of Flights cancelled must not exceed three. This KPI will not apply to delays or cancellations caused by Force Majeure Events, or cancellations directed by the Agency under clause 2.1.8.</p>
<p>Replacement of Services: In any Quarter, in the event that the aircraft becomes unserviceable, Qantas must, in at least 75 percent of all such events, provide a replacement aircraft to the Airport at the scheduled Point of Origin within 8 hours of the Scheduled Departure Time. This KPI will not apply to delays or cancellations caused by Force Majeure Events, or cancellations directed by the Agency under clause 2.1.8.</p>
<p>Target Average Fare: Over any year, the Average Fare must not be greater or less than the Target Average Fare range plus or minus a tolerance margin of 10 percent.</p>

6. Data

- 6.1. The number of Passengers who travelled on the Flight, the details of each Passenger's fare type and the cost of that fare.
- 6.2. The actual departure time of the Flight.
- 6.3. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination.
- 6.4. The composition of the Freight which was carried on the Flight.
- 6.5. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 6.5.1. The details of any Flight which was cancelled by Qantas, not at the direction of the Agency.

- 6.5.2. The details of any Flight operated using a replacement aircraft, and the time taken to provide the replacement aircraft.
- 6.6. The details of any Flight for which Qantas may charge under clause 6.1.2.
- 6.7. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

7. Reporting

- 7.1. Qantas must provide to the Agency, by the 20th calendar day after the end of each Quarter, a report that contains the following:
 - a. performance against KPIs, broken down month by month;
 - b. Target Average Fare and actual Average Fare, monthly by Flight;
 - c. breakdown in kilograms of the average Freight capacity of, and average amount of Freight accepted and transported on:
 - i. Flights which transported a number of Passengers equal to or more than 75 percent of the maximum Passenger capacity of the Flight;
 - ii. Flights which transported a number of Passengers equal to or more than 25 percent of the maximum Passenger capacity of the Flight, but less than 75 percent; and
 - iii. Flights which transported Passengers equivalent to less than 25 percent of the maximum Passenger capacity of the Flight.
- 7.2. Qantas must provide to the Agency, by the 30th calendar day after the end of each Quarter, a report that contains the details (including calculations) of the Revenue in that Quarter and the Baseline Cost and any adjustments as a result of non-performance against the KPI targets pursuant to Item 5 of Schedule 1.

8. Tariff

- 8.1. Qantas assumes full responsibility for inventory and revenue management of the Flights.
- 8.2. Qantas will integrate the Flights to and from Norfolk Island into:
 - a. Qantas' marketing activities, including Qantas Frequent Flyer programme; and
 - b. other Australian Government tourism packages.

9. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas' name and ABN;
- c. the Agency's name and address;

- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

10. Regulatory Requirements

10.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:

- a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
- b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
- c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
- d. that all flight crew and cabin crew personnel hold appropriate licenses;
- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

11. Conditions Precedent

11.1 The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- a. slot availability and overflight approvals;
- b. confirmation of all Regulatory Approvals;
- c. crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces;
- d. safety, security and operational risk assessment and sign off by Qantas;

- e. in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
 - f. ground handling and other service availability on Norfolk Island;
 - g. determination of final LOPA for onboard social distancing requirements.
- 11.2. The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

12. Transition Out Requirements

- 12.1. If requested, Qantas must:
- a. fully cooperate with the Agency and any incoming supplier and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the Activity from Qantas to the incoming supplier, the Agency or its nominee in a manner which ensures no interruption to provision of the Activity including by managing bookings in accordance with clause 5.2; and
 - b. use its best endeavours to resolve any issues arising with the transition from Qantas to the incoming supplier, the Agency or its nominee.
- 12.2. The parties agree that the terms and conditions of this Agreement apply to any Activity performed by Qantas under this Item 12.
- 12.3. If this Agreement is terminated only in part, the obligations of Qantas under this Item 12 in respect of that termination, apply only to the extent necessary to ensure the orderly transition to the Agency or other supplier of services similar to the Activity which are the subject of the terminated part of the Agreement.
- 12.4. Qantas agrees that it will not hinder in any way the transition of the provision of services similar to the Activity to a new supplier upon expiry or termination of this Agreement or part of this Agreement.

SCHEDULE 2 FUNDING

1. Funding Payable by the Agency

1.1.1. Subject to the Qantas performing the Activity in compliance with this Agreement and providing the Agency with a Correctly Rendered Invoice, the Data and the Reports the Agency will pay Qantas funding (**Funding**) in accordance with this Schedule 2.

1.2. Quarterly Funding

1.2.1. The Agency will pay Qantas for each Quarter the amount of Funding calculated as follows:

s47G(1)(a)



1.2.2. If the Funding calculated pursuant to Item 1.2.1 of this Schedule 2 is zero or less, no Funding will be payable for that Quarter.

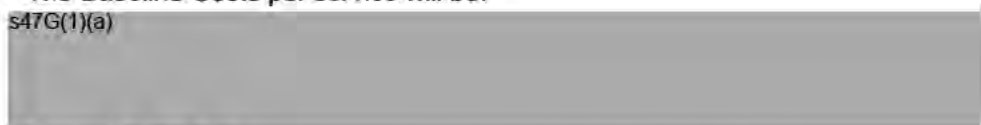
1.2.3. The Funding will be payable by the Agency within 30 days after the later of:

- a. the conclusion of the relevant Quarter; and
- b. the receipt of a Correctly Rendered Invoice, the Data and the Reports for the relevant Quarter.

1.3. Baseline Costs

1.3.1. The Baseline Costs per service will be:

s47G(1)(a)



1.4. Cancellation Fee

1.4.1. The Cancellation Fee for Cancelled Flights will be calculated as:

s47G(1)(a)



1.4.2. For the avoidance of doubt, Qantas may not take into account any amounts, costs or Revenue attributable to a Cancelled Flight when calculating the Funding amount in accordance with Item 1.2. For the avoidance of doubt, the amounts of Funding specified under this Item for Cancelled Flights are intended

to represent the total amount of Funding that Qantas is entitled to claim for that Activity.

1.5. **Bank Account Details**

1.5.1. Each of the Quarterly Funding payments will be paid to the following Qantas account:

s47G(1)(a)





Australian Government

Department of Infrastructure, Transport, Regional Development and Communications

VARIATION AGREEMENT

VARIATION AGREEMENT IN RELATION TO AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

The Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017

Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

Variation number: 2

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VARIATION AGREEMENT

VARIATION AGREEMENT IN RELATION TO AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Parties

This Variation Agreement (**Variation Agreement**) is made between and binds the following parties:

1. **The Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications** ABN 86 267 354 017 (the Agency)
2. **Qantas Airways Limited** ABN 16 009 661 901 ACN 009 661 901 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

- A. The parties entered into the Agreement.
- B. The parties varied Item 2.2 of Schedule 1 to the Agreement on or around 10 January 2022.
- C. The Agency has elected to exercise its option to extend the Agreement until 31 August 2022.
- D. The parties agree to further vary the Agreement in accordance with the terms of this Variation Agreement.

Operative provisions

In consideration of the mutual promises contained in this document, the parties to this Variation Agreement agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. In this Variation Agreement, unless the contrary intention indicates otherwise:

- a. terms used in this Variation Agreement that are not defined below and are defined in the Agreement have the same meaning as in the Agreement; and
- b. a term in bold type has the meaning shown opposite it.

Agreement	means the agreement in relation to airline services to Norfolk Island executed by the parties on 8 December 2021 as varied by the parties on or around 10 January 2022.
Attachment A	means Attachment A to this Variation Agreement.
Effective Date	means 14 April 2022.

1.2. Interpretation

- 1.2.1. In this Variation Agreement, unless the contrary intention appears:
- a. words importing a gender include any other gender;
 - b. words in the singular include the plural and words in the plural include the singular;
 - c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - d. words importing a person include a partnership and a body whether corporate or otherwise;
 - e. a reference to dollars is a reference to Australian dollars;
 - f. a reference to an Item is a reference to an Item in the Schedule;
 - g. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - h. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - i. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Variation Agreement

- 1.3.1. As far as possible all provisions of this Variation Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.2. If anything in this Variation Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.3. A provision of this Variation Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

2. Extension of the Agreement

- 2.1.1. Pursuant to clause 1.4.3 of the Agreement, the Term of the Agreement is extended for a period of two (2) months and will expire on 31 August 2022.

3. Variation

3.1. Variations to the Agreement

- 3.1.1. The parties agree that on and from the Effective Date, the Agreement is amended as shown in Attachment A by:
- a. inserting all text that is underlined; and
 - b. deleting all text that is struck through.

3.2. **Effective Date**

- 3.2.1. The parties agree that the variations to the Agreement set out in this Variation Agreement will apply on and from the Effective Date and do not, unless otherwise stated in this Variation Agreement, affect any rights or liabilities of the parties arising before that date.

4. **Acknowledgement of Consideration**

4.1. **Acknowledgement of Consideration**

- 4.1.1. The parties acknowledge:
- a. that Item 2 of Schedule 1 to the Agreement is being varied and that, as a result, the Flights and the Funding payable by the Agency to Qantas is changing; and
 - b. the sufficiency of the consideration outlined at clause 4.1.1(a) for the purpose of this Variation Agreement.

5. **General**

5.1. **Applicable law**

- 5.1.1. This Variation Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the same laws as applicable to the Agreement and each party submits to the jurisdiction of the courts of the jurisdiction as specified in the Agreement.

5.2. **Costs and Stamp Duty**

- 5.2.1. The parties agree to bear their own costs and expenses (including legal costs) of and incidental to the preparation, negotiation, execution and completion of this Variation Agreement and of any related documentation.
- 5.2.2. Qantas will pay any stamp duty payable on execution of this Variation Agreement or any related documents.

5.3. **Confirmation**

- 5.3.1. The parties confirm all other terms and conditions of the Agreement and, subject only to the amendments contained in this Variation Agreement, the Agreement shall remain in full force and effect and shall be read and construed and be enforceable as if the terms of this Variation Agreement were supplemental to the Agreement.

5.4. **Entire Agreement**

- 5.4.1. This Variation Agreement and the Agreement, when read together, record the entire agreement between the parties with respect to the parties' rights and obligations under the Agreement and supersede all prior understandings and

representations between the parties with respect to the parties' rights and obligations under the Agreement.

- 5.4.2. Each party will take such steps, execute all such documents and do all such acts and things as may be reasonably required by any other party to give effect to any of the transactions contemplated by this Variation Agreement.

5.5. Amendments in writing

- 5.5.1. The provisions of this Variation Agreement will not be varied either in law or in equity except by agreement in writing signed by the parties.

5.6. Counterparts

- 5.6.1. This Variation Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Variation Agreement by signing any counterpart.

Executed as an agreement

This Variation Agreement is made on 25 MARCH 2022

SIGNED for and on behalf of the
Commonwealth of Australia
represented by the **Department of
Infrastructure, Transport, Regional
Development and Communications**
ABN 86 267 354 017:

Sarah Vandenberg

Name of signatory

s22(1)(a)(ii)
[Redacted Signature]

Signature

In the presence of:

s22(1)(a)(ii)
[Redacted Name]

Name of witness

s22(1)(a)(ii)
[Redacted Signature]

Signature of witness

EXECUTED on behalf of **Qantas
Airways Limited ACN 009 661 901**
by its authorised representative:

s47F
[Redacted Name]

Name of Authorised Representative

s47F
[Redacted Signature]

Signature of Authorised Representative

s47F
[Redacted Name]

Name of witness

s47F
[Redacted Signature]

Attachment A



Australian Government

Department of Infrastructure, Transport, Regional Development and Communications

AGREEMENT

AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)

Commonwealth of Australia represented by the Department of Infrastructure,
Transport, Regional Development and Communications
ABN 86 267 354 017

Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

8 December 2021

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AGREEMENT**AGREEMENT FOR AIRLINE SERVICES (NORFOLK ISLAND)****Date**

This Agreement is made on **8 December 2021**.

Parties

This Agreement is made between and binds the following parties:

1. **Commonwealth of Australia** represented by the **Department of Infrastructure, Transport, Regional Development and Communications ABN 86 267 354 017** (the Agency)
2. **Qantas Airways Limited ABN 16 009 661 901 ACN 009 661 901** 10 Bourke Road, Mascot, New South Wales 2020, Australia (Qantas)

Context

This Agreement is made in the following context:

- A. Qantas has agreed to operate the Flights, subject to the Conditions Precedent (**Activity**).
- B. The Agency agrees to pay Qantas the Funding, on the terms and conditions set out in this Agreement.

Operative Provisions**1. Interpretation****1.1. Definitions**

- 1.1.1. In this Agreement, unless the context indicates otherwise:

Activity	means the provision of Flights;
Agency	means the Department of Infrastructure, Transport, Regional Development and Communications and includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement;
Agreement	means this document and includes any schedule;
Airport(s)	means the airports at the Point of Origin and Destination referred to in Item 2 of Schedule 1 and any other airport used in the provision of the Activity;

Australian Medical Assistance Teams of the Commonwealth of Australia	means any multi-disciplinary health team or teams (which may comprise of doctors, nurses, paramedics, firefighters and allied health staff) that the Commonwealth of Australia deploys for the purposes of responding to health issues arising out of or in connection with the Flights;
Australian Privacy Principle	has the same meaning as it has in the Privacy Act;
Average Fare	means the average of all fares charged by Qantas to Passengers in performing the Activity (including GST), but does not include credit card charges and all third party levies, taxes and charges, including airport and departure taxes;
Baseline Costs	means the operational costs for Flights, as set out in Item 1.3 of Schedule 2;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;
Cancellation Fee	means the amount calculated in accordance with Item 1.4 of Schedule 2;
Cancelled Flight	has the meaning given to that term in clause 6.1.2;
Carrier	includes operator and owner;
Chief Medical Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;
Chief Nursing and Midwifery Officer	means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;
Commencement Date	means 12 December 2021;
Conditions Precedent	means the conditions precedent to the Flights as set out in Item 11 of Schedule 1;
Correctly Rendered Invoice	has the meaning given in Item 9 of Schedule 1;
Data	means the data detailed in Item 6 of Schedule 1;
Destination	means the point of destination for a Flight as specified in Item 2 of Schedule 1;
Eligible Data Breach	has the same meaning as it has in the Privacy Act;

End Date	has the meaning given to that term in Item 1.1 of Schedule 1;
Flights	means the flight or flights detailed in Item 2 of Schedule 1;
Force Majeure Event	means an event not within the reasonable control of Qantas which, for the avoidance of doubt, does not include protected industrial action which relates only to Qantas;
Freight	means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;
Frequent Flyer Redemption	means the value of the Qantas Points determined in accordance with clause 2.2.4;
Funding	has the meaning given to that term in Item 1.1.1 of Schedule 2;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Guiding Principles on Business and Human Rights	means the United Nations' <i>Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework</i> available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf .
Key Performance Indicator	means one or more of the key performance indicators included in the table at Item 5 of Schedule 1;
Laws	means all applicable laws of the Commonwealth of Australia or of a State or Territory;
Modern Slavery	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Passenger	means a person who has purchased a ticket on the Flight;
Personal Information	has the same meaning as it has in the Privacy Act;
Personnel	means: (a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and

	(b) in relation to the Agency - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the Commonwealth of Australia;
Point of Origin	means the point of origin for a Flight as specified in Item 2 of Schedule 1;
Privacy Act	means the <i>Privacy Act 1988</i> (Cth);
Project Officer	means Mr Ben Walter, A/g Assistant Director of Norfolk Island Infrastructure or any substitute notified to Qantas;
Qantas Group	means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));
Qantas Group Company	means a company in the Qantas Group;
Qantas' Regular Flights	means a regular domestic flight conducted by Qantas on a commercial basis where no costs are covered by the Agency or the Commonwealth of Australia more broadly;
Quarter	means each 3 month period during the Term, commencing 1 October, 1 January, 1 April and 1 July except for: <ul style="list-style-type: none"> (a) the first Quarter which commences on the Commencement Date and ends on whichever of the following dates is the first to occur after the Commencement Date: 31 December, 31 March, 30 June and 30 September; and (b) the last Quarter which ends on the date of expiry or earlier termination of this Agreement and commences on whichever of the following dates is the first to occur prior to the date of expiry or earlier termination of this Agreement: 1 October, 1 January, 1 April and 1 July;
Regulatory Approvals	means regulatory approvals required to be obtained from Australian governments and Airports for the valid and lawful conduct of the Activity;
Regulatory Requirements	means the requirements detailed in Item 10 of Schedule 1;
Reports	means the reports detailed in Item 7 of Schedule 1;

Revenue	means, in respect of a Flight, the amounts that Qantas receives in consideration of Passengers travelling on the Flight (including Frequent Flyer Redemptions), and of Freight being transported on the Flight (net of any amount that Qantas is required by law to collect on the fare and remit to a government authority ('Taxes') and net of Security and Passenger Facilitation Costs payable in respect of the Flight);
Route	means a route detailed in Item 2 of Schedule 1 from the Point of Origin to the Destination and return;
Schedule 1	means Schedule 1: Details to this Agreement;
Schedule 2	means Schedule 2: Funding to this Agreement;
Scheduled Departure Time	means the scheduled departure time for a Flight as specified in Item 2 of Schedule 1;
Security and Passenger Facilitation Costs	means fees or charges relating to security screening and passenger facilitation imposed by Airports on Qantas arising from the use by Qantas of the Airports in undertaking the Activity;
Special Conditions	means the special conditions for a Flight as specified in Item 2 of Schedule 1;
Target Average Fare	means the Target Average Fare for each year of the Term for economy and business class fares respectively, to be determined pursuant to clause 2.2.1;
Term	has the meaning given to that term in clause 1.4.2; and

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;

- e. a reference to dollars is a reference to Australian dollars;
- f. Schedule 1 and Schedule 2 form part of this Agreement;
- g. a reference to an Item is a reference to an Item in the relevant Schedule;
- h. if any conflict arises between the terms and conditions contained in this clauses of this Agreement and any part of a Schedule, the terms and conditions of the clauses prevail;
- i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- k. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement and Term

- 1.4.1. The terms of this Agreement apply on and from the Commencement Date for the Term.
- 1.4.2. Subject to clause 1.4.3, the Term is the period commencing on the Commencement Date and expiring on the End Date.
- 1.4.3. The Agency may, in its absolute discretion, extend the Term for up to a further six months, by giving Qantas at least 9 weeks' notice.

2. Parties' Obligations

2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
 - a. operate each Flight, including the provision of ticketing, and receipt and processing of payments, from the Point of Origin to the Destination;
 - b. use reasonable endeavours to ensure the Flight departs on or around the Scheduled Departure Time;

- c. operate each Flight in compliance with any Special Conditions;
 - d. ensure each Flight complies with the requirements set out in Item 3 of Schedule 1; and
 - e. comply with the requirements set out in Item 8 of Schedule 1.
- 2.1.2. The Agency acknowledges and agrees that Qantas may apply the Qantas Frequent Flyer program to the Flights.
- 2.1.3. Qantas will be responsible for conducting the Activity and ensuring that Qantas and Qantas Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements;
 - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to Qantas by the Agency from time to time or by the Commonwealth Department of Health and any reasonable directions issued to Qantas (including Qantas Personnel) in respect of the Activity by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.4. Qantas may introduce and implement a policy of seat blocking or other passenger distancing measures on the Flights where this is required or recommended by the Chief Medical Officer. Such measures will not affect the obligation of the Agency to pay the Funding.
- 2.1.5. The Agency will be responsible for providing all reasonable assistance to Qantas to obtain all Regulatory Approvals.
- 2.1.6. The Agency acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to Qantas' Conditions of Carriage or waybill entered into between Qantas and the Passenger or freight forwarder respectively.
- 2.1.7. Qantas acknowledges that in operating the Flights it is the Carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959*, the *Damage by Aircraft Act 1999* and any relevant international agreements and the Agency is not to be regarded for any purposes as the Carrier, as operating the aircraft or as acting as agent for Qantas.
- 2.1.8. Qantas agrees that it will comply with any written direction from the Agency to cancel Flights that it is otherwise required to conduct under the terms of this Agreement and will use reasonable endeavours to operate additional Flights requested by the Agency, provided 7 days' prior notice is provided to Qantas.
- 2.1.9. Qantas agrees that it will:
- a. comply with any written direction from the Agency to prioritise the acceptance and carriage of particular Passenger(s) on Flight(s) as notified to Qantas by the Agency no later than 36 hours before the scheduled departure; and

- b. comply with any written direction from the Agency to prioritise the acceptance and transport of particular Freight on a Flight provided reasonable prior notice is provided to Qantas.

- 2.1.10. The Agency acknowledges that Qantas may subcontract the provision of parts of the Activity not including operation of aircraft undertaking the Flights.
- 2.1.11. Qantas agrees that it will make available to the Agency on request the details of all subcontractors engaged to provide any part of the Activity under this Agreement. Qantas acknowledges that the Agency may be required to publicly disclose such information and that it will obtain permission from its subcontractors to provide and publish the information.

2.2. Ticketing and Freight

- 2.2.1. The parties agree that:

- a. as at the Commencement Date the Target Average Fare for each year of the Term will be ^{s47G(1)(a)} for economy class (including GST) and ^{s47G(1)(a)} _{s47G(1)(a)} for business class (including GST);
- b. the Target Average Fare will not change unless agreed by the parties; and
- c. the Agency will not unreasonably withhold its agreement to a change to the Target Average Fare for one or more years of the Term proposed by Qantas, having regard to the objective of maximising Revenue, the predicted future demand and other factors agreed by the parties to be relevant at the time.

- 2.2.2. Qantas agrees that it will:

- a. charge each Freight consignor, and use best endeavours to collect, in respect of each Freight consignor, an amount that represents a commercially reasonable freight charge from the Point of Origin to the Destination, or as otherwise directed by the Agency;
- b. ensure Flights in-bound to Norfolk Island each Quarter, transport an amount of freight which meets or exceeds the sum of the minimum Freight capacity for all in-bound Flights, as set out in Item 4 of Schedule 1, operated during the same period, subject to demand.

- 2.2.3. Qantas must:

- a. publish and maintain on its website a complete schedule of all Flights for the next 330 days, which schedule must be consistent with the schedule for Flights required under this Agreement;
- b. ensure the Flights published on the complete schedule are at all times during the Term available to be booked on multiple platforms (including qantas.com, in a number of international currencies and all major third party global distribution systems); and
- c. put in place all necessary arrangements to ensure that bookings made for Flights scheduled to operate after the Term are managed in accordance with clause 5.2.1.a.

- 2.2.4. In relation to Frequent Flyer Redemptions:
- a. Revenue for a Flight will be taken to include the Australian dollar value of Qantas Points earned through the Qantas Frequent Flyer Program that Qantas accepts in consideration of Passengers travelling on that Flight for up to a maximum of six Passengers on each Flight.
 - b. The value of a Qantas Point will be ^{s47G(1)(a)} or any higher amount which represents the average gift card value that a Qantas Point is able to be redeemed for under the Qantas Frequent Flyer Program.
 - c. Where Qantas accepts Qantas Points earned through the Qantas Frequent Flyer Program in consideration of Passengers travelling on a Flight, from Passengers in excess of the maximum numbers specified in clause 2.2.4a (**Excess Frequent Flyer Passengers**), Revenue for that Flight will be taken to include for each Excess Frequent Flyer Passenger:
 - i. the average of Revenue received by Qantas in respect of each Passenger on the Flight who did not use Qantas Points in consideration for travelling on the Flight; or
 - ii. if all Passengers on the Flight did use Qantas Points in consideration for travelling on the Flight, the average of Revenue received by Qantas in respect of each Passenger on each Flight on the same Route during the same Quarter as the Flight who did not use Qantas Points in consideration for travelling on the Flight.

- 2.2.5. Qantas must ensure that the records it is required to maintain under clause 2.4.1 and the Data and Reports it is required to provide the Agency under Items 6 and 7 of Schedule 1 will clearly identify where Qantas has accepted Qantas Points in consideration of a Passenger travelling on a Flight and include all details reasonably required by the Agency to verify the calculations of the dollar value of those Qantas Points and the Revenue attributed to each passenger from whom Qantas has accepted Qantas Points in consideration of travelling on a Flight.

2.3. Performance Standards

- 2.3.1. Qantas must at all times meet or exceed the KPIs (if any) set out in Item 5 of Schedule 1.
- 2.3.2. Qantas must measure and report Qantas' performance against the KPIs in accordance with the requirements specified in Item 5 of Schedule 1 using appropriate measurement and monitoring tools and procedures.
- 2.3.3. Qantas must provide the Agency with information and access to those tools and procedures to allow the Agency to verify that they accurately measure Qantas' performance.
- 2.3.4. If Qantas fails to meet any KPI, Qantas must inform the Agency, promptly investigate and report on the underlying causes of the failure to meet the KPI, correct the problem and take reasonable steps, to minimise the impact of the problem and prevent it from recurring.

2.4. Records

- 2.4.1. Qantas agrees to keep adequate records in sufficient detail to enable Revenue, the costs incurred by Qantas in undertaking the Activity and Qantas' compliance with the Key Performance Indicators to be determined.
- 2.4.2. Qantas agrees no later than 30 days after the Term to provide the Agency with written certification in a form acceptable to the Agency that Qantas has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

2.5. Audit and access

- 2.5.1. Qantas agrees to:
- a. appoint an Auditor selected by Qantas to which the Agency has no reasonable objection, as and when required by the Agency; and
 - b. give that Auditor timely access to records; and
 - c. permit that Auditor to inspect and take copies of any records relevant to the Activity; and
 - d. provide all reasonable assistance to the Auditor,
- to enable that Auditor to ascertain or verify the Revenue and the costs incurred by Qantas in undertaking the Activity.
- 2.5.2. Qantas agrees that it will require and permit the Auditor to provide the Agency with accurate advice as to:
- a. whether it has been able to verify any financial information provided by Qantas to the Agency under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure; and
 - c. whether, having regard to clause 4.1, the Funding paid to Qantas in accordance with this Agreement exceeds the costs incurred by Qantas in undertaking the Activity; and
 - d. if that Funding exceeds those costs, the quantum and reasons for that discrepancy,
- provided that such advice will not disclose any details of the costs incurred by Qantas.

3. Confidentiality**3.1. Confidentiality**

- 3.1.1. Subject to clause 3.2.1, neither party will, without prior written authorisation of the other party, disclose the following provisions of this Agreement to any person (unless required to do so by Law or to its advisers to enable them to advise in connection with this Agreement):
- a. Clause 2.2.4;
 - b. Item 1.3 of Schedule 2;

- c. Item 1.4 of Schedule 2; and
- d. Item 1.5 of Schedule 2.

3.2. Confidential Information

- 3.2.1. Neither party will be restricted at any time from disclosing the details of this Agreement (including the provisions specified at clause 3.1.1. above) and any information including Data and Reports received by a party in connection with this Agreement:
- a. to its Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. to its Personnel to enable effective management or auditing of contract-related activities;
 - c. to the responsible Minister;
 - d. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. within and amongst the departments of state and agencies of the Commonwealth in service of the Commonwealth's legitimate interests;
 - f. where authorised or required by law to be disclosed; or
 - g. where it is in the public domain.

4. Payment

4.1. Payment of Funding

- 4.1.1. Qantas represents and warrants that the Funding amounts will, having regard (inter alia) to (a) the resources applied by Qantas in readying for, and maintaining the capability, for the Activity, (b) the costs of standing up and having ready for deployment the systems, equipment and personnel necessary and advisable for the Activity, and ensuring adequate contingency and redundancy in that stand up and readiness, and (c) the risks attendant on the Activity, not exceed the costs which will be incurred by Qantas in undertaking the Activity net of any funding that is available to Qantas from other Commonwealth, State, Territory or local government sources.
- 4.1.2. Subject to clause 4.2.1, and receipt of a Correctly Rendered Invoice, the Data and the Reports, the Agency agrees to pay to Qantas the Funding in accordance with Item 1 of Schedule 2

4.2. Security and Passenger Facilitation Costs

- 4.2.1. Notwithstanding any other provision in this Agreement, the Agency will not be liable for Security and Passenger Facilitation Costs under this Agreement.

4.3. Funding Cap

- 4.3.1. Qantas agrees that other than the Agency's liability for the Funding, the Agency and the Commonwealth of Australia will have no liability under or in connection

with the Activity and this Agreement, except to the extent that any liability is caused or contributed to by the wilful misconduct, breach or negligence of the Agency, any other Commonwealth government agency involved in the provision of the Flights, and their respective Personnel.

- 4.3.2. The Agency's total liability to Qantas (including Qantas Group Companies) for the Funding will not exceed ^{s47G(1)(a)} in the aggregate in respect of the Activity undertaken under the Agreement, subject to any additional Flights directed by the Agency under clause 2.1.8.

4.4. Taxes and duties

- 4.4.1. Subject to this clause 4.4, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by Qantas.
- 4.4.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this Agreement is exclusive of any GST imposed on the supply.
- 4.4.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 4.4.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5. Termination and expiry

5.1. Termination for fault

- 5.1.1. If a party fails to satisfy any of its obligations under this Agreement in any material respect, and that the failure is:
- a. not capable of remedy – the other party may, by notice, terminate the Agreement immediately; or
 - b. capable of remedy – the other party may, by notice require that the failure be remedied within a reasonable timeframe specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.
- 5.1.2. The Agency may also by notice terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if Qantas comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration.

5.2. Transition Out

- 5.2.1. In the event of expiry or earlier termination of this Agreement, Qantas must:
- a. where Qantas holds any bookings for travel on Flights after the expiry or earlier termination of this Agreement, manage such bookings by providing

the services to the Passengers in accordance with a subsequent agreement between the parties in relation to the Flights, or if there is no such agreement either:

- i. providing the Passengers with a full refund;
 - ii. transferring those bookings to an alternative supplier nominated by the Agency by the date required by the Agency.
- b. comply with any requirements set out in Item 12 of Schedule 1; and
 - c. provide further, reasonable assistance to the Agency if requested by the Agency, to facilitate the transition of the Activity to an alternative supplier or to the Agency with minimal disruption to the Agency.

5.2.2. The provisions of this clause 5.2 survive expiry or the earlier termination of this Agreement.

6. Force Majeure

6.1.1. Where Qantas is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Qantas:

- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or will be delayed in performing the obligation; and
- b. uses all reasonable efforts to remove that Force Majeure Event as quickly as possible,

that obligation is suspended, and subject to clause 6.1.2 no amount will be due and payable by the Agency under this Agreement in respect of that obligation, so far and so long as it is affected by the Force Majeure Event.

6.1.2. Where the Agency directs Qantas to cancel a Flight under clause 2.1.8 (**Cancelled Flight**) Qantas must not charge the Agency in respect of that Flight unless the direction is issued less than 4 weeks prior to the Scheduled Departure Time, in which case the Cancellation Fee will apply in accordance with Schedule 2.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice or direction under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by Qantas to the Agency* - addressed to the Project Officer at the address specified in clause 7.1.3 or as otherwise notified by the Agency; or
- b. *if given by the Agency to Qantas* - given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in clause 7.1.4 or as otherwise notified by Qantas.

- 7.1.2. A notice or direction is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail.

- 7.1.3. The address for the Agency is:

Physical address	111 Alinga Street Canberra ACT 2601
Postal address	GPO Box 594 Canberra ACT 2601
Email	s22(1)(a)(ii) @infrastructure.gov.au

- 7.1.4. The address for Qantas is:

Physical address	10 Bourke Road, Mascot NSW 2020
Postal address	As above
Email	s47F @qantas.com.au

7.2. When effective

- 7.2.1. A notice or direction is deemed to be effected:
- a. *if delivered by hand* - upon delivery to the relevant address;
 - b. *if sent by post* - upon delivery to the relevant address;
 - c. *if transmitted electronically* - upon actual receipt by the addressee.

- 7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General requirements

8.1. Workplace Gender Equality

- 8.1.1. Qantas must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 8.1.2. If Qantas becomes non-compliant with the WGE Act during the Term, Qantas must promptly notify the Agency.
- 8.1.3. Compliance with the WGE Act does not relieve Qantas from its responsibility to comply with its other obligations under this Agreement.

8.2. Work health and safety

- 8.2.1. Qantas agrees, in carrying out the Activity, to comply with:
- a. all applicable legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
 - b. all applicable policies and procedures relating to work health and safety.
- 8.2.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.2.1, Qantas will comply with those policies and procedures that produce the highest level of health and safety.

8.3. Privacy

- 8.3.1. Qantas agrees, in undertaking the Activity to comply with its obligations under the Privacy Act and not to otherwise do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Qantas becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas agrees to:
- a. notify the Agency in writing as soon as possible, which must be no later than within 3 days; and
 - b. unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.
- 8.3.3. Where Qantas is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Qantas that there has been, an Eligible Data Breach in relation to any Personal Information held by Qantas as a result of its undertaking the Activity, Qantas must:
- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;

- b. unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act; and
 - c. take any other action as reasonably directed by the Agency.
- 8.3.4. Qantas agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.3.

8.4. **Illegal Workers**

- 8.4.1. In this clause 8.4:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

- 8.4.2. Qantas must ensure that its Personnel do not include any Illegal Workers and must notify the Agency immediately if it becomes aware of any of its Personnel being an Illegal Worker.

8.5. **Child safety**

- 8.5.1. If any part of the Activity involves Qantas employing or engaging a person (whether as an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Activity or any part of the Activity, Qantas agrees:
- a. to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Activity, including mandatory reporting and working with children checks however described; and
 - b. if requested, provide the Agency at Qantas' cost, an annual statement of compliance with this clause, in such form as may be specified by the Agency.
- 8.5.2. When child safety obligations may be relevant to a subcontract, Qantas must ensure that any subcontract entered into by Qantas for the purposes of fulfilling Qantas' obligations under the contract imposes on the subcontractor the same obligations regarding child safety that Qantas has under the Agreement. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

8.6. **Modern slavery**

- 8.6.1. Qantas must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Activity.
- 8.6.2. If at any time Qantas becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, Qantas must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

8.7. Waiver

- 8.7.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right unless waived in writing.
- 8.7.2. The exercise or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent any other exercise or partial exercise of that right or remedy by the party.

8.8. Variation

- 8.8.1. A variation of this Agreement is binding only if agreed in writing and signed by the parties.

8.9. Assignment

- 8.9.1. Neither party can assign its obligations, and agrees not to assign its rights, under this Agreement without the other party's prior written approval.

8.10. Survival

- 8.10.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement will not affect the continued operation of any provision relating to confidentiality or any other provision which expressly or by implication from its nature is intended to continue (including the obligations in respect of the payment of Funding by the Agency).

8.11. Applicable law

- 8.11.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 8.11.2. The parties submit to the jurisdiction of the Australian Capital Territory.

8.12. Counterparts

- 8.12.1. This Agreement may be executed in any number of counterparts. All counterparts together constitute one agreement. A party may execute this Agreement by signing any counterpart.

8.13. Electronic execution

- 8.13.1. The Agency and Qantas acknowledge that, prior to executing this Agreement, each party agreed that the Agreement could be conveyed to them by email and then electronically signed and returned to them or their representative and that an email copy of the executed Agreement signed in this way would be valid and effectual as if the original signatures were recorded on it.
- 8.13.2. The parties agree to provide all necessary documentation and assistance to each other to confirm the power and authority of the relevant delegate or authorised representative signing this Agreement on its behalf.

Signatures

SIGNED for and on behalf of the Commonwealth of Australia represented by the Department of Infrastructure, Transport, Regional Development and Communications:

Rachel Bacon
Name of Delegate

s22(1)(a)(ii)
Signature of Delegate

9/12/2021

In the presence of:

s22(1)(a)(ii)
Name of witness

s22(1)(a)(ii)
Signature of witness

9/12/2021

EXECUTED on behalf of Qantas Airways Limited ACN 009 661 901 by its duly authorised representative:

s47F
Name of authorised representative

s47F
Signature of authorised representative

s47F
Name of witness

s47F
Signature of witness

08/12/2021

SCHEDULE 1 DETAILS**1. Term**

1.1. End Date means 30 June 2022.

2. Flights

2.1. Subject to any direction from the Agency in accordance with clause 2.1.8 of the Agreement, from 12 December 2021 to 31 March 2022, Qantas will conduct six (6) flights per week to Norfolk Island that are regular, return passenger transport and freight services with no intermediary stops. This will comprise:

- a. 3 flights per week from Brisbane on Tuesday, Thursday and Saturday;
 - b. 3 flights per week from Sydney on Monday, Friday and Sunday,
- in accordance with the Service Schedule detailed below.

Service Schedule - Sydney						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Sydney Kingsford Smith Airport	SYDNEY	NORFOLK ISLAND	179	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:55	13:35
Norfolk Island International Airport	NORFOLK ISLAND	SYDNEY	180	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	14:45	16:35

Service Schedule - Brisbane						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Brisbane International Airport	BRISBANE	NORFOLK ISLAND	183	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:30	13:45
Norfolk Island International Airport	NORFOLK ISLAND	BRISBANE	184	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	14:45	15:10

2.2. Subject to any direction from the Agency in accordance with clause 2.1.8 of the Agreement, from 1 April 2022 to 30 June 2022, Qantas will conduct four (4) flights per week to Norfolk Island that are regular, return passenger transport and freight services with no intermediary stops. This will comprise:

- a. 2 flights per week from Brisbane on Tuesday and Saturday;
- b. 2 flights per week from Sydney on Monday and Friday

in accordance with the Service Schedule detailed below:

Service Schedule - Sydney						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Sydney Kingsford Smith Airport	SYDNEY	NORFOLK ISLAND	179	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:55	13:35
Norfolk Island International Airport	NORFOLK ISLAND	SYDNEY	180	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per	14:45	16:35

				flight. Checked baggage must be transported on each flight.		
--	--	--	--	---	--	--

Service Schedule - Brisbane						
Airport	Point of Origin	Destination	Flight Number	Special Conditions	Scheduled Departure Time	Arrival Time
Brisbane International Airport	BRISBANE	NORFOLK ISLAND	183	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per flight. Checked baggage must be transported on each flight.	9:30	13:45
Norfolk Island International Airport	NORFOLK ISLAND	BRISBANE	184	Operated using a B737-800 with a saleable configuration of 174 seats to provide a Freight capacity of up to 1.5 Tonnes per	14:45	15:10

				flight. Checked baggage must be transported on each flight.		
--	--	--	--	---	--	--

3. Service standards

- 3.1. Qantas will provide the Flights to the same standard as Qantas' Regular Flights in terms of Passenger services (including in respect of in-flight food, beverages, in-flight entertainment, access to Qantas clubs or lounges).
- 3.1.1. Qantas must provide each Passenger with a minimum of 30 kilograms of checked baggage (with no limit on the number of items that Passengers can check in for a Flight).
- 3.2. All Passengers must have the option to purchase additional checked baggage in the amounts and at the rates specified in the table below.

<u>Additional Checked Baggage Allowance</u>	<u>Rate (GST inclusive)</u>
Up to 15 kilograms	\$50.00
25 kilograms	\$190.00
35 kilograms	\$330.00
Over 35 kilograms	\$330.00 plus \$35.00 per additional kilogram over 35 kilograms <i>*For example, if a passenger purchased 40 kilograms of additional baggage, the applicable charge for that baggage would be \$330.00 plus \$175.00 (equating to \$35.00 for each additional kilogram over 35 kilograms)</i>

4. Quarterly Minimum Freight Capacity Averages

- 4.1. Flights in-bound to Norfolk Island which transport a number of Passengers equal to or more than 75 percent of the maximum Passenger capacity of the Flight must, on average for each Quarter, have a minimum Freight capacity of 500 kilograms.

- 4.2. Flights in-bound to Norfolk Island which transport a number of Passengers equal to or more than 25 percent of the maximum Passenger capacity of the Flight (but lesser than 75 percent) must, on average for each Quarter, have a minimum Freight capacity of 1,000 kilograms.
- 4.3. Flights in-bound to Norfolk Island which transport a number of Passengers equivalent to less than 25 percent of the maximum Passenger capacity of the Flight must, on average for each Quarter, have a minimum Freight capacity of 1,500 kilograms.

5. Key Performance Indicators (s)

- 5.1 Qantas must comply with the following KPIs:

Table: Key Performance Indicators
<p>On-time Performance: The average of on-time departures for each Quarter, defined as within fifteen minutes of Scheduled Departure Times, must be at least eighty-five percent. This KPI will not apply to delays caused by Force Majeure Events.</p>
<p>Flight Cancellations: In any Quarter, the number of Flights cancelled must not exceed three. This KPI will not apply to delays or cancellations caused by Force Majeure Events, or cancellations directed by the Agency under clause 2.1.8.</p>
<p>Replacement of Services: In any Quarter, in the event that the aircraft becomes unserviceable, Qantas must, in at least 75 percent of all such events, provide a replacement aircraft to the Airport at the scheduled Point of Origin within 8 hours of the Scheduled Departure Time. This KPI will not apply to delays or cancellations caused by Force Majeure Events, or cancellations directed by the Agency under clause 2.1.8.</p>
<p>Target Average Fare: Over any year, the Average Fare must not be greater or less than the Target Average Fare range plus or minus a tolerance margin of 10 percent.</p>

6. Data

- 6.1. The number of Passengers who travelled on the Flight, the details of each Passenger's fare type and the cost of that fare.
- 6.2. The actual departure time of the Flight.
- 6.3. The amount of Freight which was carried by the aircraft to the Point of Origin and which was carried on the Flight from the Point of Origin to the Destination.
- 6.4. The composition of the Freight which was carried on the Flight.
- 6.5. The details of the Security and Passenger Facilitation Charges payable in relation to the Flight.
- 6.5.1. The details of any Flight which was cancelled by Qantas, not at the direction of the Agency.

- 6.5.2. The details of any Flight operated using a replacement aircraft, and the time taken to provide the replacement aircraft.
- 6.6. The details of any Flight for which Qantas may charge under clause 6.1.2.
- 6.7. Any other information the Agency reasonably requires in order to validate the relevant invoice including the Revenue.

7. Reporting

- 7.1. Qantas must provide to the Agency, by the 20th calendar day after the end of each Quarter, a report that contains the following:
 - a. performance against KPIs, broken down month by month;
 - b. Target Average Fare and actual Average Fare, monthly by Flight;
 - c. breakdown in kilograms of the average Freight capacity of, and average amount of Freight accepted and transported on:
 - i. Flights which transported a number of Passengers equal to or more than 75 percent of the maximum Passenger capacity of the Flight;
 - ii. Flights which transported a number of Passengers equal to or more than 25 percent of the maximum Passenger capacity of the Flight, but less than 75 percent; and
 - iii. Flights which transported Passengers equivalent to less than 25 percent of the maximum Passenger capacity of the Flight.
- 7.2. Qantas must provide to the Agency, by the 30th calendar day after the end of each Quarter, a report that contains the details (including calculations) of the Revenue in that Quarter and the Baseline Cost and any adjustments as a result of non-performance against the KPI targets pursuant to Item 5 of Schedule 1.

8. Tariff

- 8.1. Qantas assumes full responsibility for inventory and revenue management of the Flights.
- 8.2. Qantas will integrate the Flights to and from Norfolk Island into:
 - a. Qantas' marketing activities, including Qantas Frequent Flyer programme; and
 - b. other Australian Government tourism packages.

9. Invoices

To be a correctly rendered invoice, invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. Qantas' name and ABN;
- c. the Agency's name and address;

- d. the date of issue of the tax invoice;
- e. the title of this Agreement and the Agreement number or purchase order number (if any);
- f. the amount of Funding and Security and Passenger Facilitation Charges payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

10. Regulatory Requirements

10.1. All applicable operational, technical, safety and security regulatory requirements including, but not limited to:

- a. having an approved transport security program under the *Aviation Transport Security Act 2004* (Cth);
- b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorizing regular public transport operations granted under the *Civil Aviation Act 1988* (Cth);
- c. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
- d. that all flight crew and cabin crew personnel hold appropriate licenses;
- e. that maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Safety Regulations 1988* with associated personnel appropriately licensed;
- f. compliance with the air navigation requirements in the *Air Navigation Act 1920* (Cth); and
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth).

11. Conditions Precedent

11.1 The Agency acknowledges and agrees that the provision of the Flights by Qantas is subject to:

- a. slot availability and overflight approvals;
- b. confirmation of all Regulatory Approvals;
- c. crew and support staff availability and standing-up requirements of Qantas and its supplier's workforces;
- d. safety, security and operational risk assessment and sign off by Qantas;

- e. in the event that quarantine requirements are imposed on Qantas crew, there being sufficient Qantas crew available to undertake the Flight;
 - f. ground handling and other service availability on Norfolk Island;
 - g. determination of final LOPA for onboard social distancing requirements.
- 11.2. The parties will consult and agree on any changes to the Flights as a result of the above conditions not being met.

12. Transition Out Requirements

- 12.1. If requested, Qantas must:
- a. fully cooperate with the Agency and any incoming supplier and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the Activity from Qantas to the incoming supplier, the Agency or its nominee in a manner which ensures no interruption to provision of the Activity including by managing bookings in accordance with clause 5.2; and
 - b. use its best endeavours to resolve any issues arising with the transition from Qantas to the incoming supplier, the Agency or its nominee.
- 12.2. The parties agree that the terms and conditions of this Agreement apply to any Activity performed by Qantas under this Item 12.
- 12.3. If this Agreement is terminated only in part, the obligations of Qantas under this Item 12 in respect of that termination, apply only to the extent necessary to ensure the orderly transition to the Agency or other supplier of services similar to the Activity which are the subject of the terminated part of the Agreement.
- 12.4. Qantas agrees that it will not hinder in any way the transition of the provision of services similar to the Activity to a new supplier upon expiry or termination of this Agreement or part of this Agreement.

SCHEDULE 2 FUNDING

1. Funding Payable by the Agency

1.1.1. Subject to the Qantas performing the Activity in compliance with this Agreement and providing the Agency with a Correctly Rendered Invoice, the Data and the Reports the Agency will pay Qantas funding (**Funding**) in accordance with this Schedule 2.

1.2. Quarterly Funding

1.2.1. The Agency will pay Qantas for each Quarter the amount of Funding calculated as follows:

s47G(1)(a)

1.2.2. If the Funding calculated pursuant to Item 1.2.1 of this Schedule 2 is zero or less, no Funding will be payable for that Quarter.

1.2.3. The Funding will be payable by the Agency within 30 days after the later of:

- a. the conclusion of the relevant Quarter; and
- b. the receipt of a Correctly Rendered Invoice, the Data and the Reports for the relevant Quarter.

1.3. Baseline Costs

1.3.1. The Baseline Costs per service will be:

s47G(1)(a)

1.4. Cancellation Fee

1.4.1. The Cancellation Fee for Cancelled Flights will be calculated as:

s47G(1)(a)

1.4.2. For the avoidance of doubt, Qantas may not take into account any amounts, costs or Revenue attributable to a Cancelled Flight when calculating the Funding amount in accordance with Item 1.2. For the avoidance of doubt, the amounts of Funding specified under this Item for Cancelled Flights are intended

to represent the total amount of Funding that Qantas is entitled to claim for that Activity.

1.5. **Bank Account Details**

1.5.1. Each of the Quarterly Funding payments will be paid to the following Qantas account:

s47G(1)(a)





Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

s47F

Head of International Affairs & Partnerships
10 Bourke Road
MASCOT NSW 2020

Dear s47F

Variation to the Agreement for Airline Services to Norfolk Island

We refer to our email sent on 22 June 2022 in relation to the Department's request to extend the term of the Agreement.

In accordance with the Agreement, as varied on 25 March 2022, the Parties agree to further vary the Agreement as follows:

- | | |
|-------------------------|--|
| Clause 1.4.3 | The Agency, in its absolute discretion, has agreed to extend the Term of the Agreement. The Term will expire on 5 February 2023. |
| Schedule 1, clause 1.1. | End Date means 5 February 2023. |
| Schedule 1, clause 2.2. | The reference to "31 August 2022" is amended to 5 February 2023. |
| Schedule 2, clause 1.3 | The Baseline Costs per service will be: |

s47G(1)(a)

All other terms of the Agreement remain unchanged.

Please countersign and return this letter at your earliest convenience.

Yours sincerely,

s22(1)(a)(ii)

Acting Assistant Secretary

s47F

Head of International Affairs and Partnerships

s47F

7 July 2022

GPO Box 594, Canberra ACT 2601, Australia

• telephone 1800 075 001 • websites infrastructure.gov.au | communications.gov.au | arts.gov.au

• ABN: 86 267 354 017



Australian Government
**Department of Infrastructure,
 Transport, Regional Development,
 Communications and the Arts**

Qantas Airways Limited

s47F

Senior Manager, International and Industry Affairs
 A Wing, Level 3, 10 Bourke Road
 MASCOT NSW 2020

Dear s47F

Variation No 4 to the Agreement for Airline Services to Norfolk Island

We refer to the agreement in relation to airline services to Norfolk Island executed by the parties on 8 December 2021 as varied by the parties on or around 10 January 2022, 25 March 2022 and 7 July 2022 (Agreement). Terms not defined in this letter have the meaning given in the Agreement.

As discussed with you, the Agency is seeking to extend the term of the Agreement to 19 March 2023. Accordingly, in accordance with the Agreement the parties agree to vary the Agreement as follows:

Clause Reference	Amendment
Clause 1.1.1	Delete the definition of "Agreement" and replace with the following: Agreement means this document as varied by the parties from time to time including any schedule;
Schedule 1, Clause 1.1	Replace "5 February 2023" with "19 March 2023".
Schedule 1, Clause 2.2	Replace "5 February 2023" with "19 March 2023".

All other terms of the Agreement remain unchanged.

Please countersign below and return this letter at your earliest convenience.

Yours sincerely,

s22(1)(a)(ii)

Aaron O'Neill
 Assistant Secretary
 Norfolk Island Branch
 Territories Division

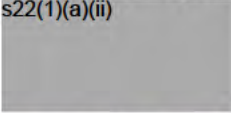
30 January 2023



In accordance with clause 8.8.1 of the Agreement, I agree to vary the Agreement as set out in the terms above:

Signed by the Agency:

s22(1)(a)(ii)



Aaron O'Neill

ASSISTANT SECRETARY
DITR/DCA

s47F



GROUP EXECUTIVE
CORPORATE AFFAIRS



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

SERVICES AGREEMENT

FOR AIRLINE SERVICES TO NORFOLK ISLAND

The Commonwealth of Australia as represented by the Department of Infrastructure, Transport,
Regional Development, Communications and the Arts
ABN 86 267 354 017

Qantas Airways Limited
ABN 16 009 661 901
ACN 009 661 901

Agreement number: 10024496

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SERVICES AGREEMENT

FOR AIRLINE SERVICES TO NORFOLK ISLAND

Parties

This Agreement is made between and binds the following parties:

1. **The Commonwealth of Australia** as represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ABN 86 267 354 017, 111 Alinga Street, Canberra, Australian Capital Territory (**Commonwealth**).
2. **Qantas Airways Limited** (ABN 16 009 661 901 ACN 009 661 901), 10 Bourke Road, Mascot, New South Wales 2020 (**Supplier**)

Context

- A. The Commonwealth requires the provision of certain services for the purposes of airline services to Norfolk Island.
- B. The Supplier has fully informed itself of all aspects of the work required to be performed and agrees to provide the Services on the terms and conditions contained in this Agreement.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Supplier Obligations

1.1. Nature of Services

- 1.1.1. The Supplier must perform and complete the Services:
 - a. within the Period for Services in a timely manner and in accordance with the milestones, performance standards and timetable (if any) specified in Item A of Schedule 1;
 - b. with the care, skill and any relevant practice of a person who regularly acts in the capacity for which the Supplier is engaged and who possesses the knowledge, skill and experience of a person qualified to act in that capacity;
 - c. in accordance with relevant best practice and comply with all applicable Australian standards, including those specified in Item A of Schedule 1, industry standards and guidelines and any Agency or Commonwealth policies, standards or guidelines specified in Item A of Schedule 1; and
 - d. to meet any particular standards set out in Item A of Schedule 1 for performance of the Services.

- 1.1.2. The Supplier agrees to keep copies of all certifications and other records to confirm their compliance with all applicable standards referred to in clause 1.1.1.c.
- 1.2. **Supplier is carrier**
- 1.2.1. The Supplier acknowledges that any passenger or freight consignor who utilises the Services does so pursuant to a contract of carriage or waybill entered into between the Supplier and the passenger or freight forwarder respectively.
- 1.2.2. The Supplier must issue any ticket or other notice required for the purposes of relying on any liability limitations contained in any Legislation that is applicable to the flight.
- 1.2.3. The Supplier further acknowledges that in operating the Services it is the "carrier" for all purposes including the *Civil Aviation (Carriers' Liability) Act 1959* (the CACL Act) and any international conventions and the Commonwealth is not to be regarded for any purposes as the carrier, as operating the aircraft or as acting as agent for the Supplier.
- 1.3. **Modification of flights and other service providers**
- 1.3.1. Without limiting any other right under this Agreement, at any time, the Commonwealth may, in its absolute discretion, request in writing that the Supplier:
- a. cancels one or more flights;
 - b. modifies one or more flights;
 - c. operates one or more additional flights;
 - d. prioritises the acceptance and carriage of one or more particular passengers on a flight; or
 - e. prioritises the acceptance and transport of particular freight on a flight.
- 1.3.2. Where the Commonwealth issues a request under clause 1.3.1, the Supplier must use reasonable endeavours to comply with the request.
- 1.3.3. Where a flight is cancelled or modified to meet a request by the Commonwealth pursuant to clause 1.3.1.a or clause 1.3.1.b (as applicable), then:
- a. where the request was given more than 28 days in advance of the scheduled flight departure date, there will be no fee adjustment or entitlement to an Allowance; and
 - b. where the request was given less than 28 days in advance of the scheduled flight departure date, the Supplier will be entitled to claim the relevant Allowance specified in Item E.1.1 of Schedule 3.
- 1.3.4. Where the Supplier is reasonably able to comply with a request under clause 1.3.1.c, prior to the operation of any additional flight or flights requested by the Commonwealth pursuant to clause 1.3.1.c, the parties must agree in

writing on the allowance that the Supplier will be entitled to claim in respect of the relevant flight or flights in accordance with Item E.1.3 of Schedule 3.

- 1.3.5. Where the Supplier prioritises particular passengers or freight to meet a request by the Commonwealth pursuant to clause 1.3.1.d or clause 1.3.1.e (as applicable) and the prioritisation results in one or more other passengers or other freight being transferred to another flight, the Supplier will be entitled to claim from the Commonwealth any reasonable costs arising from that prioritisation, including but not limited to replacement tickets, accommodation costs, transport costs and reasonable costs or damages claimed by an affected passenger or freight consignor.
- 1.3.6. The Commonwealth may, at any time, perform or retain third parties to perform, services that are similar to the Services, however the Commonwealth will not enter into any underwriting arrangement with any third party in relation to passenger services that are similar to the Services.
- 1.4. **Not applicable**
- 1.5. **Liquidated Damages**
- 1.5.1. The Parties acknowledge and agree that if the Supplier fails to commence providing the Services under this Agreement by the timeframe detailed in Item H.1.1 of Schedule 1:
- a. the Commonwealth will suffer loss and damage;
 - b. all such loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth, be impossible, complex or expensive to quantify accurately in financial terms and the loss and damage arising from such delay may not be able to be precisely calculated or proved; and
 - c. the amount of liquidated damages specified in Item H.1.2 of Schedule 1 is a genuine pre-estimate of the damage which would be suffered by the Commonwealth in such event.
- 1.5.2. Subject to Force Majeure, if the Supplier fails to commence providing the Services under this Agreement by the timeframe detailed in Item H.1.1 of Schedule 1, the Commonwealth may recover from the Supplier, or deduct from moneys due to the Supplier, as liquidated damages and not as a penalty, the amount specified in Item H.1.2 of Schedule 1.
- 1.5.3. Upon becoming entitled to recover liquidated damages under clause 1.5.2, the Commonwealth may, within the period determined under clause 1.5.4, elect in respect of the relevant period of delay to do either or both of the following:
- a. recover the amount of liquidated damages as a debt due to the Commonwealth; or
 - b. accept agreed compensation from the Supplier to the extent (if any) that liquidated damages are not recovered under paragraph (a). Such

compensation, together with any liquidated damages elected to be recovered under paragraph (a), will be equivalent in value to the total liquidated damages recoverable for that period of delay.

- 1.5.4. Unless some other period is agreed in writing between the Parties, the period within which the Commonwealth may make an election under clause 1.5.3 will be one week after the end of the relevant period of delay.
- 1.5.5. For the purposes of this clause 1.5, the "**relevant period of delay**" means the whole period of each delay for which liquidated damages are recoverable by the Commonwealth under clause 1.5.2, or one or more periods within the whole period of delay which the Commonwealth may nominate in writing as the case requires.
- 1.5.6. The Commonwealth's right to claim liquidated damages for delay or to recover other compensation as agreed shall be the Commonwealth's sole remedy for loss or damage suffered by the Commonwealth as a result of the delay during the period in which an entitlement to recover liquidated damages accrues under clause 1.5.2. Nothing in this clause 1.5 will affect, limit or exclude the Commonwealth's rights or remedies in respect of:
- a. a delay in providing the Services for which an entitlement to recover liquidated damages does not accrue under this Agreement;
 - b. loss or damage suffered by the Commonwealth at any time for causes other than the Supplier's delay in providing the Services;
 - c. termination for default; or
 - d. termination in accordance with clause 5.13.
- 1.5.7. If the Supplier fails to provide the Services in full in accordance with this Agreement by the timeframe detailed in Item H.1.1 of Schedule 1, and such failure is not caused in full or part by the Commonwealth, then the Commonwealth may immediately terminate this Agreement in accordance with clause 5.15.
- 1.6. **Timetable – Delay and Extension of Time**
- 1.6.1. Subject to clause 1.6.2, the Supplier must perform the Services in a timely manner and in accordance with the timeframes set out in this Agreement (unless otherwise agreed in accordance with this Agreement), including by ensuring that all timetables, milestones, timeframes for delivery and other due dates (as applicable) are met.
- 1.6.2. If there is likely to be a Delay in the discharge of an obligation by the Supplier under this Agreement, then the Commonwealth will grant the Supplier an extension of time as necessary to accommodate the Delay, subject to:
- a. the Supplier notifying the Project Officer in writing (as soon as possible, but no later than 3 Business Days, after it becomes aware of the likely Delay) of the following:

- i. the circumstances which the Supplier considers contributed to, or caused, that Delay;
 - ii. the Supplier's obligations that are or may be affected by that Delay; and
 - iii. the anticipated duration of that Delay; and
- b. the Supplier using its best endeavours to minimise the consequences of the Delay.

1.6.3. In this clause 1.6, '**Delay**' means a delay that is either:

- a. caused by an event or circumstance that is beyond the reasonable control of the Supplier (and/or that of the Supplier's Personnel); or
- b. directly caused by the Commonwealth's failure to act in accordance with this Agreement;

and, in either case, cannot be avoided by the Supplier implementing reasonable precautions or alternative methods or approaches.

1.6.4. For the avoidance of doubt, a delay is not beyond the reasonable control of the Supplier (and/or that of the Supplier's Personnel) if it is caused through an industrial dispute affecting the Supplier's Personnel, except for an industrial dispute that is protected under the *Fair Work Act 2009* (Cth).

1.7. **Performance of Services**

1.7.1. The Supplier warrants that:

- a. the Supplier and the Supplier's Specified Personnel are suitably qualified, hold all necessary approvals or authorisations, have sufficient expertise to perform the Services, are of good fame and character and will act in all circumstances in a fit and proper manner while carrying out work under this Agreement;
- b. the Supplier has all licences necessary to perform the Services; and
- c. in performing the Services, the Supplier will identify and implement strategies to mitigate the risks affecting the progress of the Services arising in connection with the spread of COVID-19, including from changes to legislative requirements (including health regulations);
- d. in performing the Services, the Supplier will not:
 - i. breach an obligation owed to another person; or
 - ii. infringe any Intellectual Property rights or Moral Rights of another person.

1.7.2. The Supplier is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Agreement, and will not be relieved of any of its obligations under this Agreement because of any:

- a. involvement by the Commonwealth (or Commonwealth Personnel) in the performance of the Services;
- b. payment made to the Supplier on account of the Services;
- c. subcontracting of the Services; or
- d. acceptance by the Commonwealth of replacement Personnel (including Specified Personnel).

1.8. **Acceptance of Deliverables**

1.8.1. The Supplier must submit each Deliverable in the manner and within the timeframes specified in Item A.2 and Item A.3 of Schedule 1, for acceptance by the Commonwealth in writing.

1.8.2. If the Commonwealth considers, acting reasonably, that the Deliverable is not acceptable to the Commonwealth as a whole, the Commonwealth may notify the Supplier of the reasons why the Deliverable is unacceptable and require the Supplier to re-submit a revised Deliverable within 10 Business Days of the notification (or such longer period as specified in the notice). The Supplier must comply with any such notice, at no additional cost to the Commonwealth.

1.8.3. If the Supplier re-submits a revised Deliverable that is still unacceptable to the Commonwealth as a whole, the Commonwealth may:

- a. notify the Supplier of the reasons why the Deliverable is still unacceptable and require the Supplier to re-submit a further revised Deliverable within 10 Business Days of the notification (or such longer period as specified in the notice) at no additional cost to the Commonwealth;
- b. accept the Deliverable "as is" subject to:
 - i. a reasonable deduction in the Fees associated with the Deliverable; or
 - ii. the Supplier promptly completing, at no additional cost to the Commonwealth, any rectification work reasonably required by the Commonwealth; or
- c. terminate this Agreement immediately by notice in writing to the Supplier.

1.8.4. For the avoidance of doubt, the Commonwealth may withhold payment of any Fees or Allowances in accordance with clause 2.1.5 until a Deliverable has been accepted in accordance with this clause 1.8.

1.9. **Performance Standards**

1.9.1. The Supplier must at all times meet or exceed the KPIs (if any) set out in Item A.5 of Schedule 1.

1.9.2. The Supplier must measure and report the Supplier's performance against the KPIs in accordance with the requirements specified in Item A.4 of Schedule 1 using appropriate measurement and monitoring tools and procedures. The

Supplier must submit its Performance Report in accordance with clause 1.8 and Item A.2 of Schedule 1.

- 1.9.3. The Supplier must provide the Commonwealth with information and access to those tools and procedures to verify that they accurately measure the Supplier's performance.
- 1.9.4. If the Supplier fails to meet any KPI, or if the Commonwealth has reasonable grounds to consider that a KPI may not be achieved during a Quarter and requests that the Supplier comply with the following provisions in respect of that potential non-compliance, the Supplier must:
- a. promptly investigate and report on the underlying causes of the failure to meet the KPI;
 - b. prepare a remediation plan which identifies steps that the Supplier will take to correct the problem, prevent any future failure to meet the KPI and/or mitigate any damage (including reputational damage) that has occurred as a result of the failure to meet the KPI; and
 - c. submit the remediation plan to the Commonwealth for review.
- 1.9.5. The Commonwealth must, within a reasonable time of receipt of the remediation plan, but not more than ten (10) Business Days, advise the Supplier Representative either that it agrees or does not agree (with reasons) to the remediation plan.
- 1.9.6. The Supplier must promptly take all reasonable action to address any reasons given by the Commonwealth for not agreeing the remediation plan and resubmit the remediation plan for further consideration in accordance with clause 1.9.5.
- 1.9.7. The Supplier must comply with its obligations in an agreed remediation plan.
- 1.9.8. The Parties agree that:
- a. a failure by the Supplier to meet or exceed a KPI will not be *"a failure that is not capable of remedy"* for the purposes of clause 5.15.1; and
 - b. a failure by the Supplier to comply with an agreed remediation plan under this clause 1.9 may be *"a failure that is not capable of remedy"* for the purposes of clause 5.15.1.
- 1.9.9. The Parties will undertake an annual review of the KPIs, at a time to be agreed between the Parties, to ensure the KPIs remain suitable and appropriate to encourage the achievement of quality service outcomes. Where a change to the KPIs is agreed, the Parties may effect a change to the KPIs using the variation mechanism under clause 5.6.2. No change will be valid unless and until such a variation has been affected.

1.10. **Subcontracts**

1.10.1. The Supplier must not subcontract the whole or any part of the performance of the Services unless the Supplier has the Commonwealth's prior written consent to do so.

1.10.2. The Commonwealth will not unreasonably refuse to allow the Supplier to subcontract performance of the Services, but may impose conditions on approval.

1.10.3. The conditions referred to in clause 1.10.2 may include:

- a. evidence of the existence of insurance required under the subcontract;
- b. provisions dealing with Intellectual Property and/or Moral Rights;
- c. provisions dealing with disclosure of any Confidential Information or Personal Information;
- d. provisions dealing with compliance with the Protective Security Policy Framework.

1.10.4. Despite any approval the Commonwealth gives the Supplier under this clause, the Supplier will be responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement.

1.10.5. Where subcontractors are required to have access to Security Classified Information, the subcontractors must possess a security clearance of the appropriate type and level of classification. The Supplier must make compliance by the subcontractor with the provisions of this clause a condition of any subcontract.

1.10.6. The Supplier must ensure that any subcontractor is aware of all terms and conditions relevant to the subcontractor's part in the provision of the Services.

1.10.7. For the purposes of this clause 1.10, the Commonwealth has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item A.6 of Schedule 1.

1.11. **Extension of provisions to subcontractors and Supplier's Personnel**

1.11.1. In this clause 1.11:

Requirement means an obligation, condition, restriction or prohibition binding on the Supplier under this Agreement.

1.11.2. The Supplier agrees to ensure that its subcontractors and Supplier's Personnel comply with all Legislative Requirements.

1.11.3. The Supplier agrees to exercise any rights it may have against any of its subcontractors, Supplier's Personnel or third parties in connection with a Requirement in accordance with any direction by the Commonwealth.

1.12. **Specified Personnel**

- 1.12.1. If it is stated in Item E of Schedule 1 that the Supplier is to perform all or some of the Services using Specified Personnel, the Supplier must engage those Specified Personnel to perform those Services.
- 1.12.2. The Supplier must ensure that the Specified Personnel sign any documents that the Commonwealth considers necessary to conduct appropriate security checks on the Specified Personnel.
- 1.12.3. Where Specified Personnel are unable to undertake work in respect of the Services (for any reason), the Supplier must notify the Commonwealth immediately.
- 1.12.4. The Supplier must, if requested by the Commonwealth acting in its absolute discretion, remove Supplier's Personnel (including Specified Personnel) from work in relation to the Services.
- 1.12.5. If clause 1.12.3 or clause 1.12.4 applies, the Supplier must provide replacement Specified Personnel acceptable to the Commonwealth at no additional charge to the Commonwealth and at the earliest opportunity.
- 1.12.6. If the Supplier is unable or unwilling to remove any Supplier's Personnel, or to provide an acceptable replacement, the Commonwealth may terminate this Agreement immediately by notice in writing to the Supplier.
- 1.12.7. The Supplier must ensure that the Supplier's Personnel uphold the values and behave in a manner that is consistent with the Australian Public Service Values and the APS Code of Conduct, as applicable to their work in connection with this Agreement. The APS Values and Code of Conduct are contained in Part 3 of the *Public Service Act 1999* (Cth).

1.13. **Illegal Workers**

- 1.13.1. In this clause 1.13:

Illegal Worker means a person who has unlawfully entered Australia, remains in Australia after their visa has expired, or is working in breach of their visa conditions.

- 1.13.2. The Supplier must ensure that its Supplier's Personnel do not include any Illegal Workers and must notify the Commonwealth immediately if it becomes aware of any of its Supplier's Personnel being an Illegal Worker.

1.14. **The Supplier's Invoice and bank account**

- 1.14.1. The Supplier must submit a correctly rendered invoice for payment of the Fees and Allowances payable under this Agreement, in the manner and at the times stated in Item F of Schedule 1 and in accordance with this clause.
- 1.14.2. An invoice will be taken to be correctly rendered if:

- a. the invoice is addressed in accordance with the requirements at Item A.1 of Schedule 2;
 - b. the invoice contains:
 - i. the full title of the Services;
 - ii. the name of the Project Officer;
 - iii. the Commonwealth's Agreement number;
 - iv. the Commonwealth's purchase order number;
 - v. the Supplier's name and ABN (if applicable);
 - vi. the Supplier's bank account details for payment;
 - c. where the Supplier is registered for GST:
 - i. the invoice is in the form of a valid tax invoice;
 - ii. the words "tax invoice" stated prominently;
 - iii. the date of issue of the tax invoice;
 - iv. the total amount payable (including GST);
 - v. the GST amount shown separately;
 - d. the Services related to the amount being claimed have been fully performed to the Commonwealth's satisfaction and have been accepted by the Commonwealth pursuant to this Agreement;
 - e. the invoice is accompanied, where required, by reasonable documentation that provides evidence that the Services have been performed and/or that any Allowance claimed is payable;
 - f. where required, the amount claimed in the invoice is substantiated by documentation that provides evidence that the amount claimed in the invoice has been calculated correctly;
 - g. written certification in a form acceptable to the Commonwealth that the Supplier has met all applicable legislative obligations regarding the payment of remuneration, fees or other amounts payable to its employees involved in performance of the Agreement; and
 - h. the amount claimed in the invoice is due for payment under this Agreement.
- 1.14.3. An invoice is not correctly rendered where:
- a. it includes amounts that are not properly payable under this Agreement or are incorrectly calculated;
 - b. it relates to a payment in relation to which the Commonwealth has exercised its rights under clause 2.1.5 of the Agreement.

- 1.14.4. The Supplier agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the Commonwealth under this Agreement to be determined.
- 1.15. **Taxes (Including GST), Duties And Government Charges**
- 1.15.1. Subject to this clause 1.15, all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of this Agreement must be borne by the Supplier.
- 1.15.2. Unless otherwise indicated, all consideration for supply made under this Agreement is exclusive of any GST imposed on the supply.
- 1.15.3. If one Party (**Party A**) makes a taxable supply to the other Party (**Party B**) under this Agreement, Party B on receipt of a tax invoice from Party A must pay without set-off an additional amount to Party A equal to the GST imposed on the supply in question.
- 1.15.4. No Party may claim or retain from the other Party an amount in relation to a supply made under this Agreement for which the first Party can obtain an input tax credit or decreasing adjustment.
- 1.16. **Superannuation**
- 1.16.1. This Agreement is entered into on the understanding that the Commonwealth is not required to make any superannuation contributions in connection with the Agreement.
- 1.17. **Insurance**
- 1.17.1. The Supplier agrees to effect and maintain insurance as specified in Item G of Schedule 1.
- 1.17.2. If requested by the Project Officer, the Supplier must promptly provide proof of the currency of any policy of insurance.
- 1.17.3. This clause 1.17 will survive the expiration or termination of this Agreement and does not affect any requirement to insure against death or injury to employees under Legislative Requirements.
- 1.18. **Proportionate liability regimes excluded**
- 1.18.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Supplier under or in connection with this Agreement.
- 1.19. **Indemnity**
- 1.19.1. The Supplier indemnifies the Commonwealth and Commonwealth Personnel (**those indemnified**) from and against any:
- a. death or personal injury;
 - b. liability incurred by those indemnified;

- c. loss of or damage to property; and
- d. loss or expense incurred by those indemnified in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by those indemnified,

arising from any breach by the Supplier of its obligations or warranties under law or under this Agreement.

- 1.19.2. The Supplier's liability to indemnify the Commonwealth and Commonwealth Personnel under the preceding subclause is reduced proportionately to the extent that any negligent act or omission by those indemnified caused or contributed to any loss or liability incurred.
- 1.19.3. The Supplier agrees that:
 - a. the Commonwealth may enforce the indemnity under this clause 1.19 in favour of Commonwealth Personnel for the benefit of such persons in the name of the Commonwealth or of such persons; and
 - b. the Commonwealth's right to be indemnified under this clause 1.19 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.
- 1.19.4. This clause 1.19 will survive the expiration or termination of this Agreement.

1.20. **Form and Ownership of Contract Product**

- 1.20.1. The Supplier undertakes to ensure that all Contract Product is neatly and legibly compiled and adequately documented and contains sufficient evidence to support all conclusions, findings, and opinions.
- 1.20.2. The Supplier agrees to provide the Contract Product in the form specified in Item C of Schedule 1.
- 1.20.3. On the expiration or earlier termination of this Agreement, the Supplier must provide to the Commonwealth copies of all Contract Product, whether complete or incomplete, in the Supplier's possession within 5 Business Days.
- 1.20.4. Ownership of any Intellectual Property in any pre-existing matter remains unchanged as a result of this Agreement.
- 1.20.5. The Supplier grants to, or must procure for, the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, communicate, publish, reproduce, adapt and exploit Contract Product anywhere in the world for any purpose.
- 1.20.6. If requested by the Project Officer, the Supplier must, at the Supplier's own cost, bring into existence, sign, execute or otherwise deal with any document that is required to give effect to this clause.

- 1.20.7. The Supplier warrants that it is entitled, or at the relevant time will be entitled, or will procure rights so that the Supplier is entitled at the relevant time, to deal with the Intellectual Property in any Contract Product in the manner provided for in this clause.
- 1.20.8. The provisions of this clause 1.20 survive termination or expiration of this Agreement.
- 1.21. **Moral Rights Consent**
- 1.21.1. For the purposes of this clause 1.21 '**Specified Acts**' in relation to any Contract Product, means the following classes or types of acts or omissions:
- a. those which would, but for this clause 1.21, infringe the author's right of attribution of authorship;
 - b. those which would, but for this clause 1.21, infringe the author's right of integrity of authorship;
- but does not include:
- c. those which would infringe the author's right not to have authorship falsely attributed.
- 1.21.2. Where the Supplier is a natural person and the author of any Contract Product, the Supplier consents to the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Product (whether occurring before or after the consent is given).
- 1.21.3. In any other case, the Supplier warrants or undertakes that the author of the Contract Product has given or will give a written consent to the Specified Acts, and that such consent extends directly or indirectly to the performance of the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Product (whether occurring before or after the consent is given).
- 1.22. **Security**
- 1.22.1. The Supplier acknowledges that in performing this Agreement, the Supplier may become subject to certain statutory provisions relating to security and security issues, and agrees to ensure that the Supplier's Personnel are aware of, and comply with, those statutory provisions.
- 1.22.2. The Supplier must ensure (and, if requested by the Commonwealth, must demonstrate that it has ensured) the application to the Services of all guidance relevant to the implementation of security controls suitable for the protection of systems and data as outlined in the Australian Government Information Security Manual (available at <https://www.cyber.gov.au/acsc/view-all-content/ism>), as updated from time to time.
- 1.22.3. The Supplier acknowledges and agrees that compliance with the requirements of clause 1.22.2 may be independently assessed and verified (at the Commonwealth's cost and as required by the Commonwealth during the term of this Agreement) by a certified practitioner from the Information Security

Registered Assessors Program as further detailed at <https://www.cyber.gov.au/acsc/view-all-content/programs/irap>.

1.23. **Conflict of Interest**

- 1.23.1. The Supplier warrants at the Date of this Agreement that, to the best of the Supplier's knowledge after making diligent inquiry, no Conflict exists (inside or outside of Australia) or is likely to arise in the performance of its obligations under this Agreement, including by any of the Supplier's Personnel, that has not been disclosed by the Supplier in writing to the Commonwealth for the purposes of entering into this Agreement.
- 1.23.2. If during the term of this Agreement, a Conflict arises, or appears likely to arise, the Supplier must notify the Commonwealth immediately in writing and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict. If the Supplier fails to notify the Commonwealth or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Agreement.
- 1.23.3. The Supplier agrees that the Supplier will not, and will use the Supplier's best endeavours to ensure that any of the Supplier's Personnel do not, engage in any activity or obtain any interest during the course of this Agreement that is likely to create a Conflict.

1.24. **Disclosure by the Supplier**

- 1.24.1. The Supplier warrants that, as at the Date of this Agreement, having made reasonable inquiries of the Supplier's Personnel, the Supplier is not aware of any:
- a. matter relating to the Supplier's commercial, financial or legal capacity or status and may affect the Supplier's ability to perform the Services;
 - b. litigation, proceedings, judicial or administrative enquiry, investigation, claim or allegation, actual or threatened, and whether admitted or contested, by another person or body (including the regulatory bodies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Stock Exchange or equivalent bodies), against or in any way involving the Supplier or any settlement in respect of any such matter;
 - c. proven or alleged breach or default under any law, regulation, agreement, order or award binding on the Supplier; or
 - d. any criminal or other act or any other behaviour, conduct or activity of the Supplier which may:
 - i. materially and adversely affect the Supplier's credit worthiness, integrity, character or reputation; or
 - ii. attract or have attracted negative publicity or attention or generate public or media criticism either inside or outside of Australia,

and which was not disclosed in writing to the Commonwealth prior to execution of this Agreement.

1.25. **Transition-out**

- 1.25.1. The Commonwealth may notify the Supplier of the date upon which the Supplier must commence the transition-out activities in accordance with the Transition-out Plan. The Supplier must comply with its obligations under this clause 1.25 and with any directions given by the Commonwealth on and from the date specified in the notice.
- 1.25.2. In the event of termination or expiration of this Agreement, and from the date specified in a notice issued pursuant to clause 1.25.1, the Supplier must:
- a. comply with any transition-out requirements set out in Item D of Schedule 1 and any approved Transition-out Plan;
 - b. fully cooperate with any incoming supplier and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the Services to the incoming supplier;
 - c. at no additional costs to the Commonwealth, provide reasonable assistance to the Commonwealth, to facilitate the transition of the Services to an alternative supplier or to the Commonwealth with minimal disruption to the Commonwealth, but not including the transfer of any bookings; and
 - d. deal with all documents, devices, articles or mediums in which Contract Product or Official Information is embodied as directed by the Commonwealth, subject to any requirement of law binding on the Supplier.
- 1.25.3. The Parties agree that the terms and conditions of this Agreement apply to any Services performed by the Supplier during any transition out period under this clause 1.25. For the avoidance of doubt the Fees shall apply to the Services performed by the Supplier during any transition out period.
- 1.25.4. If this Agreement is terminated only in part, the obligations of the Supplier under this clause 1.25 in respect of that termination, apply only to the extent necessary to ensure the orderly transition to the Commonwealth or other supplier of services similar to the Services which are the subject of the terminated part of the Agreement.
- 1.25.5. The Supplier agrees that it will not hinder in any way, the transition of the provision of services similar to the Services to a new supplier upon termination or expiration of this Agreement or part of the contract.
- 1.25.6. Notwithstanding clause 1.20.3, the Supplier may retain one full copy of Contract Product after expiration or termination of this Agreement, solely for necessary back-up, insurance or record-keeping purposes. Any copy retained by the Supplier under this clause remains subject at all times to any restrictions on the use of that Material under this Agreement, including those relating to Intellectual Property, confidentiality, privacy and security.

1.25.7. The provisions of this clause 1.25 survive termination or expiration of this Agreement.

2. The Commonwealth's Obligations

2.1. Payment of Fees and Allowances

2.1.1. Subject to this Agreement, the Commonwealth will pay to the Supplier the amount of any Fees and Allowances due under this Agreement, within 20 days after the receipt by the Commonwealth of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is required on the next Business Day.

2.1.2. The Commonwealth is not required to make any payment to the Supplier in the absence of a correctly rendered invoice. Accordingly, an invoice which includes amounts that are not properly payable under this Agreement or are incorrectly calculated is not a correctly rendered invoice and the Commonwealth is not required to make any payment in respect of that invoice.

2.1.3. The Commonwealth will pay the Fees and Allowances to the bank account nominated by the Supplier by electronic funds transfer.

2.1.4. Payment of the Fees and Allowances, by electronic funds transfer to the nominated account under the preceding subclause, relieves the Commonwealth from any other form of payment.

2.1.5. The Commonwealth will be entitled (in addition and without prejudice to any other rights it may have) to defer payment or reduce the amount of any of the Fees, and any applicable Allowances, until the Supplier has completed, to the Commonwealth's satisfaction (acting reasonably), that part of the Services to which the payment relates.

2.1.6. The Commonwealth may set-off any amount due and payable by the Supplier to the Commonwealth in relation to this Agreement against any amount due and payable by the Commonwealth to the Supplier in relation to this Agreement.

2.2. Interest

2.2.1. This clause 2.2 only applies where:

- a. the value of this Agreement is not more than ^{s47G(1)(a)} (GST inclusive); and
- b. the amount of the interest payable exceeds ^{s47G(1)(a)}

2.2.2. For payments made by the Commonwealth more than 20 days after the amount became due and payable, the Commonwealth must pay the interest accrued on the payment.

2.2.3. Interest payable under this clause 2.2 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day

that the non-corporate Commonwealth entity effects payment as represented by the formula set out in clause 2.2.4.

- 2.2.4. The formula for the calculation of interest under clause 2.2 is:

s47G(1)(a)



2.3. **Commonwealth Material**

- 2.3.1. Not used.

2.3.2. Ownership of all Commonwealth Material, and any Intellectual Property in Commonwealth Material, remains vested at all times in the Commonwealth.

2.3.3. The Commonwealth grants to the Supplier a royalty-free, non-exclusive licence to use, reproduce, supply and adapt the Commonwealth Material solely for the purposes of this Agreement and subject to any conditions or restrictions notified from time to time in writing by the Commonwealth.

2.3.4. On the expiration or earlier termination of this Agreement, the Supplier agrees to return to the Commonwealth within 5 Business Days, all Commonwealth Material remaining in the Supplier's possession.

2.3.5. The risk of any loss or damage of the Commonwealth Material passes to the Supplier on delivery and remains with the Supplier until the Supplier delivers the Commonwealth Material back to the Commonwealth.

2.4. **Assistance and Facilities**

2.4.1. The Commonwealth will provide the Supplier with assistance, and make facilities available, as set out in Item D of Schedule 2.

3. **Laws and Government Policies applying to this Agreement**

3.1. **Compliance with Commonwealth Policies**

3.1.1. At all times when using the Commonwealth's premises or facilities, the Supplier must ensure that the Supplier's Personnel, comply with all reasonable directions and procedures relating to workplace harassment, occupational health (including the smoke free work place policy), APS and the Commonwealth's Codes of Conduct, safety and security, including the Commonwealth's Internet access and usage guidelines, in effect at those premises or in regard to those facilities, as notified by the Commonwealth or as might reasonably be inferred from the use to which the premises or facilities are being put.

3.2. **Compliance with Laws**

3.2.1. In performing the Services, the Supplier must:

- a. comply with Legislative Requirements, particularly the *Crimes Act 1914* (Cth), *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Public Governance, Performance and Accountability Act 2013* (Cth), *Archives Act 1983* (Cth), and the *Workplace Gender Equality Act 2012* (Cth) (**the Gender Equality Act**) (as relevant);
- b. act in accordance with all relevant health directives relating to COVID-19 including fact sheets issued to the Supplier by the Commonwealth from time to time or by the Commonwealth Department of Health and any reasonable directions or recommendations issued to the Supplier (including its Personnel) in respect of the Services by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia; and
- c. not enter into a subcontract with a person named by the Director of Workplace Gender Equality as an employer that is currently not complying with the Gender Equality Act.

3.2.2. The Supplier acknowledges that:

- a. any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of Confidential Information stored in any computer in the course of performing a contract for the Commonwealth may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including imprisonment;
- b. section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth";
- c. the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Supplier are authorised to publish or disclose the fact or document) may be an offence under the *Crimes Act 1914* (Cth), punishment for which may include imprisonment; and
- d. it is an offence under Division 137 of the *Criminal Code 1995* (Cth) to give false and misleading information to the Commonwealth or its officers or agents.

3.3. **Work health and safety**

3.3.1. The Supplier must ensure that the Services and the work conducted by the Supplier and any of the Supplier's Personnel comply with all applicable Legislative Requirements, standards and policies, and requirements of this

Agreement, that relate to the health and safety of the Supplier, the Supplier's Personnel, Commonwealth Personnel and third parties.

- 3.3.2. The Supplier must comply with the Supplier's obligations under any applicable WHS law, and must ensure, so far as is reasonably practicable, that the Supplier's officers (as defined by applicable WHS law) and workers comply with their obligations under applicable WHS law. The other provisions of clause 3.3 do not limit this subclause.
- 3.3.3. The Supplier must ensure, so far as is reasonably practicable, the health and safety of:
- a. workers engaged, or caused to be engaged by the Supplier; and
 - b. workers whose activities in carrying out work are influenced or directed by the Supplier,
- while the workers are at work in relation to this Agreement.
- 3.3.4. The Supplier must ensure, so far as is reasonably practicable, that the health and safety of other persons (including Commonwealth Personnel) is not put at risk from work carried out under this Agreement.
- 3.3.5. The Supplier must consult, cooperate and coordinate with the Commonwealth in relation to the Supplier's work health and safety duties.
- 3.3.6. The Supplier must, on request, give all reasonable assistance to the Commonwealth, by way of provision of information and documents, to assist the Commonwealth and the Commonwealth's officers (as defined in the WHS Act) to comply with the duties imposed under the WHS Act.
- 3.3.7. The Commonwealth may direct the Supplier to take specified measures in connection with the Supplier's work under this Agreement or otherwise in connection with the Services that the Commonwealth considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Supplier must comply with the direction. The Supplier is not entitled to an adjustment to the Fees or to charge additional Allowances merely because of compliance with the direction.
- 3.3.8. If an event occurs in relation to the Supplier's work under this Agreement that leads, or could lead, to the death or, or an injury or illness to, a person (**Notifiable Incident**), the Supplier must:
- a. immediately report the matter to the Commonwealth, including all relevant details that are known to the Supplier;
 - b. as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - i. its cause; and
 - ii. what adverse effects (if any) it will have on the Supplier's work under this Agreement, including adverse effects on risks to health and safety;

- c. as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
 - d. as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
 - e. within 3 Business Days after the Notifiable Incident, give the Commonwealth a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 3.3.8.b and a statement of the steps the Supplier has taken or that the Supplier proposes to take as required by clauses 3.3.8.c and d; and
 - f. within 3 months after the Notifiable Incident, give the Commonwealth a written report giving full details of its actions in relation to the Notifiable Incident.
- 3.3.9. The Supplier's obligations under clause 3.3.8 are in addition to any reporting obligation that the Supplier has under a written law.
- 3.3.10. The Supplier must fully co-operate, at the Supplier's own cost, with any investigation by any government agency (including the Commonwealth) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 3.3.11. A word or expression in this clause 3.3 that is:
- a. used or defined in an applicable WHS law; and
 - b. is not otherwise defined in this clause 3.3 or elsewhere in this Agreement,
- has, for the purposes of this clause 3.3, the meaning given to it under the applicable WHS law.
- 3.4. **Workplace Gender Equality**
- 3.4.1. This clause applies only to the extent that the Supplier is a 'relevant employer' for the purposes of the Gender Equality Act.
- 3.4.2. If the Supplier becomes non-compliant with the Gender Equality Act during the term of this Agreement, the Supplier must notify the Project Officer.
- 3.4.3. If the term of this Agreement exceeds 18 months, the Supplier must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Project Officer.
- 3.4.4. Compliance with Gender Equality Act does not relieve the Supplier from its responsibility to comply with its other obligations under this Agreement.
- 3.5. **Treatment of Confidential Information**
- 3.5.1. Subject to subclause 3.5.7, neither the Supplier nor the Commonwealth, without the prior written consent of the other Party, will disclose any Confidential Information of the other Party to a third party.

- 3.5.2. The Supplier may only use and copy Confidential Information held or acquired or which the Supplier may have had access to in connection with this Agreement to the extent reasonably necessary to enable the Supplier to comply with its obligations under this Agreement.
- 3.5.3. The Supplier must not transfer any of the Commonwealth's Confidential Information outside Australia, or allow persons outside Australia to have access to such Material, without the Commonwealth's prior written consent. In giving its consent, the Commonwealth may impose such conditions as the Commonwealth considers appropriate.
- 3.5.4. The Commonwealth may at any time request the Supplier to give and to arrange for the Supplier's Personnel engaged in the performance of the Services to give, or arrange for any person with a Third Party Interest to give, written undertakings in a form the Commonwealth requires relating to the use and non-disclosure of the Commonwealth's Confidential Information.
- 3.5.5. If the Supplier receives a request under subclause 3.5.4, the Supplier must promptly arrange for all such undertakings to be given to the Commonwealth.
- 3.5.6. The Supplier will make available to the Project Officer or other nominated Commonwealth representatives the original non-disclosure undertakings made by the Supplier's Personnel, within 5 Business Days of a verbal or written request being made by the Project Officer or other nominated Commonwealth representative.
- 3.5.7. The obligations on the Parties under this clause are not taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a Party to its advisers or employees solely to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of activities relating to this Agreement;
 - c. is disclosed by the Commonwealth in response to a request by any Commonwealth Minister;
 - d. is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by the Commonwealth within the Commonwealth of Australia (including with other Commonwealth agencies), where this serves the Commonwealth's legitimate interests;
 - f. is authorised or required by law to be disclosed by the Commonwealth;
 - g. is authorised or required by law to be disclosed by the Supplier, provided the Supplier notifies the Commonwealth immediately and such notification is prior to disclosure;
 - h. is disclosed by the Commonwealth and is information in a Material form in respect of which an interest, whether by licence or otherwise, in the

Intellectual Property in relation to that Material form, has vested in, or is assigned to, the Commonwealth under this Agreement or otherwise, and that disclosure is permitted by that licence or otherwise; or

i. is in the public domain otherwise than due to a breach of this clause.

- 3.5.8. Where either the Supplier or the Commonwealth disclose Confidential Information to another person:
- a. pursuant to subclauses 3.5.7.a, b or e, the disclosing Party:
 - i. must notify the receiving person that the information is Confidential Information; and
 - ii. not provide the information unless the receiving person agrees to keep the information confidential; or
 - b. pursuant to subclauses 3.5.7.c or d, the disclosing Party must notify the receiving Party that the information is Confidential Information.
- 3.5.9. Where the Parties agree in writing after the Date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, that documentation is incorporated into, and becomes part of this Agreement, on the date on which both Parties have signed that documentation.
- 3.5.10. The obligations under this clause 3.5 continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in Schedule 5, for the period set out in the Schedule in respect of that item; and
 - b. in relation to any information which the Parties agree in writing after the Date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed in writing in respect of that information.
- 3.5.11. On expiration or earlier termination of this Agreement the Supplier will, on request, deliver up to the Commonwealth (and not retain any copies) all Material forms of the Commonwealth's Confidential Information.
- 3.5.12. Nothing in this clause derogates from any obligation that either the Supplier or the Commonwealth may have either under the *Privacy Act 1988* (Cth), or under this Agreement, in relation to the protection of Personal Information.
- 3.6. **Protection of Personal Information**
- 3.6.1. This clause applies only where the Supplier deals with Personal Information when, and for the purpose of, providing the Services under this Agreement.
- 3.6.2. The Supplier acknowledges that the Supplier is a '**contracted service provider**' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the **Privacy Act**), and agrees in respect of the provision of the Services under this Agreement:

- a. to use or disclose Personal Information obtained during the course of providing the Services under this Agreement only for the purposes of this Agreement;
 - b. not to do any act or engage in any practice that would breach an Australian Privacy Principle (**APP**) contained in section 14 of the Privacy Act, which if done or engaged in by an Agency, would be a breach of that APP;
 - c. to carry out and discharge the obligations contained in the APPs as if the Supplier were an Agency under that Act;
 - d. to comply insofar as practicable with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time and relating to privacy and Personal Information;
 - e. to notify individuals whose Personal Information the Supplier holds, that complaints about the Supplier's acts or practices may be investigated by the Information Commissioner who has power to award compensation against the Supplier in appropriate circumstances;
 - f. not to use or disclose Personal Information or engage in an act or practice that would breach an APP or an Approved Privacy Code (**APC**), where that section, APP or APC is applicable to the Supplier, unless where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under clause 3.5 of this Agreement, and the activity or practice which is authorised by clause 3.5 of this Agreement is inconsistent with the APP or APC;
 - g. to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or an APC binding a Party to this Agreement;
 - h. to immediately notify the Commonwealth if the Supplier becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 3.6, whether by the Supplier or the Supplier's Personnel; and
 - i. to ensure that any of the Supplier's Personnel who are required to deal with Personal Information for the purposes of this Agreement are made aware of the Supplier's obligations set out in this clause 3.6.
- 3.6.3. The Supplier must ensure that any subcontract entered into for the purpose of fulfilling the Supplier's obligations under this Agreement contains provisions to ensure that the subcontractor has the same obligations as the Supplier under this clause 3.6, including the requirement in relation to subcontracts.
- 3.6.4. The Supplier indemnifies the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the Supplier's obligations under this clause 3.6, or a subcontractor under the subcontract provisions referred to in subclause 3.6.3.

3.6.5. In this clause 3.6, the terms '**Agency**', '**APC**' and '**APP**' have the same meaning as they have in section 6 of the Privacy Act.

3.6.6. The provisions of this clause 3.6 survive termination or expiration of this Agreement.

3.7. **Data breaches**

3.7.1. If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Agreement or its provision of the Services, the Supplier agrees to:

- a. notify the Commonwealth in writing as soon as possible, which must be no later than within 3 days; and
- b. unless otherwise directed by the Commonwealth, carry out an assessment in accordance with the requirements of the Privacy Act.

3.7.2. Where the Supplier is aware that there are reasonable grounds to believe there has been, or where the Commonwealth notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Agreement or its provision of the Services, the Supplier must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Commonwealth, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Commonwealth.

3.7.3. The Supplier agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 3.7.

3.8. **Books and records**

3.8.1. The Supplier must:

- a. keep and must require the Supplier's subcontractors to keep adequate books and records, in accordance with Australian accounting standard, in sufficient detail to enable the amounts payable by the Commonwealth under this Agreement to be determined; and
- b. retain and require the Supplier's subcontractors to retain for a period of seven years after termination or expiration of this Agreement all books and records relating to the Services.

3.8.2. The Supplier must bear the Supplier's own costs of complying with this clause.

3.8.3. This clause 3.8 applies for the term of this Agreement and for a period of 7 years from the termination or expiry of this Agreement.

3.9. **Audit and access**

3.9.1. The Commonwealth (which, in clauses 3.9.1 to 3.9.4, includes the Commonwealth's authorised representatives) may conduct audits relevant to the performance of the Supplier's obligations under this Agreement. Audits may be conducted of:

- a. the Supplier's operational practices and procedures as they relate to this Agreement, including security procedures;
- b. the accuracy of the Supplier's invoices and reports in relation to the provision of the Services under this Agreement;
- c. the Supplier's compliance with the Supplier's confidentiality, privacy obligations and security obligations under this Agreement.

3.9.2. The Commonwealth may, at reasonable times to the extent necessary for the Commonwealth to exercise the Commonwealth's rights under this clause and on giving reasonable notice to the Supplier:

- a. access the Supplier's premises to the extent relevant to the performance of this Agreement;
- b. require the provision by the Supplier and the Supplier's Personnel, of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
- c. inspect and copy documentation, books and records, however stored, in the custody or under control of the Supplier, the Supplier's Personnel; and
- d. require assistance in respect of any inquiry into or concerning the Services or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.

3.9.3. The Supplier must provide the Commonwealth with access to the Supplier's computer hardware and software to the extent necessary for the Commonwealth to exercise the Commonwealth's rights under this clause, and provide the Commonwealth with any reasonable assistance the Commonwealth requests to use that hardware and software.

3.9.4. The Commonwealth will use reasonable endeavours to ensure that:

- a. audits performed pursuant to clause 3.9.1; and
- b. the exercise of the general rights granted to the Commonwealth by clause 3.9,

do not delay or disrupt in any material respect the operation of the Supplier's operations.

- 3.9.5. Except as set out in clause 3.9.6, each Party must bear its own costs of any reviews and/or audits.
- 3.9.6. If the Supplier is able to substantiate that the Supplier has incurred direct expenses in the Commonwealth's exercise of the rights granted under clause 3.9.1 or clause 3.9 which, having regard to the value of this Agreement, are substantial, the Parties will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.
- 3.9.7. The Commonwealth's rights under clause 3.9.2.a to 3.9.2.c apply equally to the Auditor-General, the Privacy Commissioner or the Information Commissioner, or any of their delegates (**Commissioners**), for the purpose of performing their respective statutory functions or powers.
- 3.9.8. The Supplier must do all things necessary to comply with a requirement of a Commissioner, provided such requirements are legally enforceable and within the power of the relevant Commissioner.
- 3.9.9. The requirement for, and participation in, audits does not in any way reduce the Supplier's responsibility to perform the Supplier's obligations in accordance with this Agreement.
- 3.9.10. The Supplier must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 3.9.
- 3.9.11. Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of any Commissioner. The Commissioner's rights under this Agreement are in addition to any other power, right or entitlement of any of the Commissioners.
- 3.9.12. This clause 3.9 applies for the term of this Agreement and for a period of 7 years from the termination or expiry of this Agreement.
- 3.9.13. Subject to clause 1.14.2.f, the Supplier is not required to produce sensitive price or cost information to the Commonwealth. Upon request from the Commonwealth in the event that it considers it requires access to sensitive price or cost information from the Supplier in order to conduct an audit relevant to the performance of the Services, the Supplier agrees to:
- a. appoint an auditor selected by the Supplier to which the Commonwealth has no reasonable objection, as and when required by the Commonwealth; and
 - b. give that auditor timely access to records; and
 - c. permit that auditor to inspect and take copies of any records relevant to the Services; and
 - d. provide all reasonable assistance to the auditor,

to enable that auditor to ascertain or verify the issues relevant to the performance of the Services requested by the Commonwealth.

- 3.9.14. The Supplier agrees that it will require and permit the auditor to provide the Commonwealth with accurate advice as to:
- a. whether it has been able to verify the issues raised by the Commonwealth under this Agreement; and
 - b. if it has failed to verify that information, the reasons for that failure.

3.10. **Access to documents**

- 3.10.1. In this clause, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 3.10.2. The Supplier acknowledges that this Agreement is a '**Commonwealth contract**', as defined in the *Freedom of Information Act 1982* (Cth).
- 3.10.3. Where the Commonwealth has received a request for access to a document created by, or in the possession of, the Supplier or any subcontractor that relates to the performance of this Agreement (and not to the entry into this Agreement), the Commonwealth may at any time by written notice require the Supplier to provide the document to the Commonwealth and the Supplier must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 3.10.4. The Supplier must include in any subcontract relating to the performance of this Agreement provisions that will enable the Supplier to comply with the Supplier's obligations under this clause 3.10.

3.11. **Shadow Economy Procurement Connected Policy**

- 3.11.1. In this clause 3.11:

Shadow Economy Procurement Connected Policy means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>;

Satisfactory means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy;

Statement of Tax Record means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at [https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting an STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR); and

Valid means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

- 3.11.2. The Supplier warrants that at the Date of this Agreement it holds a Valid and Satisfactory Statement of Tax Record.
- 3.11.3. The Supplier must hold a Valid and Satisfactory Statement of Tax Record at all times during the term of this Agreement and, on request by the Commonwealth, provide to the Commonwealth a copy of any such Statement of Tax Record.
- 3.11.4. Without limiting its other rights under this Agreement or at law, any failure by the Supplier to comply with the requirements outlined in clauses 3.11.2 and 3.11.3 will be a breach of this Agreement.
- 3.11.5. If the Supplier, is a partnership, the Supplier will ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the Commonwealth as soon as possible after they become a partner to the partnership.
- 3.11.6. The Supplier warrants in relation to any first-tier subcontractor it has engaged to deliver Services with an estimated value of over ^{s47G(1)(a)} (GST inclusive) that the Supplier either:
 - a. provided a Valid and Satisfactory Statement of Tax Record for the subcontractor as part of its response for the approach to market that resulted in the entry of this Agreement; or
 - b. holds a Satisfactory Statement of Tax Record for the subcontractor that was Valid at the time of entry into the subcontract by the Supplier and the subcontractor.
- 3.11.7. The Supplier must ensure that any first-tier subcontractor engaged to deliver Services with an estimated value of over ^{s47G(1)(a)} (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- 3.11.8. The Supplier must retain a copy of any Statement of Tax Record held by any first-tier subcontractor in accordance with clause 3.11.7 and must, on request by the Commonwealth, provide to the Commonwealth a copy of any such Statement of Tax Record.

3.12. **Indigenous procurement policy**

3.12.1. In this clause 3.12:

Indigenous Participation Plan means the plan set out at Schedule 8;

Indigenous Procurement Policy means the Indigenous Procurement Policy of the Commonwealth, details of which are available at

<https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy>; and

IPP Contractor Portal

means the online portal where the Supplier can report on their progress against the mandatory minimum requirements under the Indigenous Procurement Policy and which is available here:
<https://www.niaa.gov.au/ippcp>.

- 3.12.2. It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.
- 3.12.3. The Supplier must use its reasonable endeavours to increase its:
- a. purchasing from Indigenous enterprises; and
 - b. employment of Indigenous Australians, in the delivery of the Services.
- 3.12.4. Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the Supplier's supply chain.
- 3.12.5. Without limiting clause 3.12.3, the Supplier must comply with the Indigenous Participation Plan.
- 3.12.6. The Supplier must provide a written report to the Commonwealth via the IPP Contractor Portal on its compliance with the Indigenous Participation Plan:
- a. at least once every quarter during the term of this Agreement; and
 - b. within 5 Business Days after the end of the term of this Agreement (**End of Term Report**).
- 3.12.7. The End of Term Report must identify whether the Supplier:
- a. met the mandatory minimum requirements as set out in the Indigenous Participation Plan; and
 - b. otherwise complied with the Indigenous Participation Plan.
- 3.12.8. If the Supplier did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.
- 3.12.9. During the term of this Agreement, the Supplier is responsible for managing their access to the IPP Contractor Portal, including by enabling and disabling, as required, its authorised Supplier Personnel's access to the IPP Contractor Portal.
- 3.12.10. If the Commonwealth considers, in its absolute discretion at any time during the term of this Agreement, that it has concerns in relation to the Supplier's:
- a. compliance with the Indigenous Participation Plan; or

- b. overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Commonwealth may request the Supplier to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan. The Supplier must comply with all reasonable directions issued by the Commonwealth in relation to the Supplier's implementation of the Indigenous Participation Plan.

- 3.12.11. Without limiting its other rights under this Agreement or at law, any material failure by the Supplier to:

- a. implement the Indigenous Participation Plan; or
 b. comply with a direction issued by the Commonwealth under clause 3.12.10, will be a breach of this Agreement, and the Commonwealth may terminate this Agreement in accordance with clause 5.15.

- 3.12.12. Notwithstanding any other clause of this Agreement, the Supplier acknowledges and agrees that the reports it submits under clause 3.12.6:

- a. will be recorded in a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
 b. will not be considered to be Supplier Confidential Information; and
 c. may be used by Commonwealth entities for any purpose, including for evaluation of an offer by the Supplier to provide goods and/or services to a Commonwealth entity.

3.13. **Modern Slavery**

- 3.13.1. In this clause 3.13:

Guiding Principles on Business and Human Rights means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf; and

Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).

- 3.13.2. The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.

- 3.13.3. If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

4. Child Safety

4.1. Definitions

4.1.1. In this clause 3.12.1:

Child	means an individual(s) under the age of 18 years and Children has a similar meaning;
Child-Related Personnel	means officers, employees, contractors, agents and volunteers of the Supplier involved with the Services who as part of that involvement may interact with Children;
Legislation	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;
National Principles for Child Safe Organisations	means the National Principles for Child Safe Organisations, endorsed by the Council of Australian Governments as published by the Commonwealth Government (available at: https://www.humanrights.gov.au/about/news/coag-endorses-national-principles-child-safe-organisations);
Relevant Legislation	means Legislation in force in any jurisdiction where any part of the Services may be carried out; and
Working With Children Check or WWCC	means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

4.2. Relevant checks and authority

4.2.1. The Supplier must:

- a. comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Services, including all necessary Working With Children Checks however described; and
- b. ensure that Working With Children Checks obtained in accordance with this clause 4.2 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Services.

4.3. National Principles for Child Safe Organisations and other action for the safety of Children

4.3.1. The Supplier agrees in relation to the Services to:

- a. implement the National Principles for Child Safe Organisations;
 - b. ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
 - c. complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
 - d. put into place and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 4.3;
 - e. provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
 - i. the National Principles for Child Safe Organisations;
 - ii. the Supplier's risk management strategy required by this clause 4.3;
 - iii. Relevant Legislation relating to requirements for working with Children, including Working With Children Checks; and
 - iv. Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
 - f. provide the Commonwealth with an annual statement of compliance with clauses 4.2 and 4.3, in such form as may be specified by the Commonwealth.
- 4.3.2. With reasonable notice to the Supplier, the Commonwealth may conduct a review of the Supplier's compliance with this clause.
- 4.3.3. The Supplier agrees to:
- a. notify the Commonwealth of any failure to comply with this clause 3.12.1;
 - b. co-operate with the Commonwealth in any review conducted by the Commonwealth of the Supplier's implementation of the National Principles for Child Safe Organisations or compliance with this clause 3.12.1; and
 - c. promptly, and at the Supplier's cost, take such action as is necessary to rectify, to the Commonwealth's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with this clause 3.12.1.
- 4.3.4. When Child Safety obligations may be relevant to a Subcontract, the Supplier must ensure that any subcontract entered into by the Supplier for the purposes of fulfilling the Supplier's obligations under the subcontract imposes on the Subcontractor the same obligations regarding Child Safety that the Supplier has under the Agreement. Each subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

5. Matters arising under this Agreement

5.1. Liaison and Party Representatives

- 5.1.1. The Parties agree to comply with the requirements set out in the Contract Management Framework appearing at Schedule 6.
- 5.1.2. In addition to the requirements set out in the Contract Management Framework, the Supplier must:
- a. liaise with, and report to, the Project Officer at the times and in the manner as reasonably directed by the Project Officer in relation to the conduct and performance of the Services; and
 - b. comply with any reasonable direction of the Project Officer in the performance of the Services, to the extent those directions are not inconsistent with the Supplier's obligations under this Agreement.
- 5.1.3. A direction under clause 5.1.1 may be given orally by the Project Officer but, if requested by the Supplier, the direction must be given as a notice.
- 5.1.4. The Project Officer and the Supplier's Representative must liaise as necessary for any purpose in connection with the Supplier's performance of the Services.
- 5.1.5. The Project Officer is the Commonwealth's representative, and the Supplier's Representative is the Supplier's representative, for the purposes of this Agreement. The Project Officer and the Supplier's Representative each have authority to receive and sign notices for their respective Parties under this Agreement. The Supplier's Representative has authority to accept any request or direction in relation to the Services.

5.2. Contract management meetings

- 5.2.1. The Commonwealth and the Supplier agree to hold contract management meetings in accordance with the agreed procedures set out in Schedule 6.

5.3. Supplier's acknowledgments

- 5.3.1. The Supplier acknowledges that:
- a. the Supplier does not rely on any representation or warranty made by or on behalf of the Commonwealth which is not set out in this Agreement;
 - b. it has had the opportunity to examine all information supplied by or on behalf of the Commonwealth in respect of the matters contemplated by this Agreement (**Information**), to seek such independent advice as it considers necessary in respect of the Information and to make satisfactory enquiries of the Commonwealth and other relevant persons in respect of the Information;
 - c. it has knowledge and experience in relation to business, services and operational matters and is capable of evaluating the merits associated with entering into and performing its obligations under this Agreement;

- d. no representation or warranty has been made by the Commonwealth or any person acting on behalf of the Commonwealth (including any Minister, officer, director, employee, agent or adviser of any of them) in relation to:
 - i. any principles or policies to be applied by any governmental authority with respect to the regulation of the Services;
 - ii. the exercise of discretions under the *Civil Aviation Act 1988* or any other legislation;
 - iii. the interpretation or application of existing or future provisions of the *Civil Aviation Act 1988* or any other legislation;
 - iv. the volume of the Services to be provided under this Agreement that might be available; and
- e. it has satisfied itself as to the correctness and sufficiency of its proposal and that the Fees cover the cost of complying with all its obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of this Agreement.

5.4. **Capacity of Supplier**

5.4.1. The Supplier warrants:

- a. (Full power and authority): The Supplier has the legal right, capacity and full power and authority to enter into and carry out its obligations under this Agreement and each transaction contemplated by this Agreement.
- b. (All consents and approvals): The Supplier has obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable the Supplier to enter into and carry out its obligations under this Agreement and each transaction contemplated by this Agreement.
- c. (No violation of any law): The execution, delivery and performance of this Agreement by the Supplier will not breach, contravene or violate any provision of:
 - i. any law, regulation, order, rule or decree of any governmental authority;
 - ii. the Constitution of the Supplier; or
 - iii. any security agreement, deed, contract, undertaking or other instrument to which the Supplier is a party or which is binding on it, and does not and will not result in the creation or imposition of any security over any of its assets pursuant to the provisions of any such security agreement, deed, contract, undertaking or other instrument.

5.5. **Applicable law and jurisdiction**

5.5.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item I of Schedule 1.

5.5.2. The Parties submit to the jurisdiction of the courts of that State or Territory.

5.6. **Entire Agreement and Variation**

5.6.1. This Agreement records the entire agreement between the Parties in relation to its subject matter.

5.6.2. The provisions of this Agreement will not be varied either at law or in equity except by an agreement in writing and signed by duly authorised representatives of both Parties.

5.7. **Waiver**

5.7.1. If a Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

5.7.2. A waiver of any provision or rights under this Agreement:

- a. must be in writing signed by the Party entitled to the benefits of that provision or right; and
- b. is effective only to the extent set out in any written waiver.

5.7.3. A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.

5.7.4. A waiver by either Party of any of its rights will not be deemed to be a waiver in respect of any other right.

5.7.5. In this clause 5.7, 'rights' means rights or remedies provided by this Agreement or at law.

5.8. **Negation of Employment, Partnership and Agency**

5.8.1. This Agreement does not make the Supplier the Commonwealth's employee, officer, partner or agent, nor does the Supplier have authority to bind or represent the Commonwealth with third parties.

5.8.2. The Supplier agrees not to represent itself, and to ensure that the Supplier's Personnel do not represent themselves, as having the relationship or authority referred to in the preceding subclause.

5.9. **Public Announcements/Media Contact**

5.9.1. The Supplier must not make any public announcement or make any representation to any media representative about or concerning:

- a. this Agreement; or
- b. any matter related to this Agreement,

without the prior written consent of the Project Officer.

5.10. **Collection of Information**

5.10.1. The Supplier will only collect information on the Commonwealth's behalf as directed by the Commonwealth, and will collect it in accordance with the procedures the Commonwealth specifies from time to time.

5.11. **Assignment**

5.11.1. The Supplier must not assign, in whole or in part, either the Supplier's rights or obligations under this Agreement without the prior written approval of the Commonwealth.

5.11.2. The Commonwealth may impose any terms and conditions considered appropriate when giving approval under clause 5.11.1.

5.11.3. The Supplier must not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Agreement without first consulting the Commonwealth.

5.12. **Change in control**

5.12.1. In this clause 5.12:

Prescribed Rights means more than 30% of voting, income or capital participation rights in the Supplier; and

Transferor means any person or persons who beneficially hold or control the Prescribed Rights (or more than 30% of voting, income or capital participation rights in any other company or companies which beneficially hold or control the Prescribed Rights) from time to time.

5.12.2. The Supplier is in default under this Agreement if the Transferor transfers, mortgages, charges (other than by way of charge over all its assets and undertaking), grants any option or other rights over, disposes of or ceases to be beneficially entitled to the whole or any part of the Prescribed Rights, unless all of the following are satisfied:

- a. notice: the Supplier gives the Commonwealth not less than a month's prior notice of its desire to deal with the Prescribed Rights, details of the Parties, documentation and other relevant circumstances;
- b. no default: the Supplier is not in default under this Agreement;
- c. Commonwealth requirements: the Transferor deals with the whole or part of the Prescribed Rights to a person (Transferee) who, unless otherwise notified by the Commonwealth, is not a government department or instrumentality or a trustee of or a legal entity constituting or representing a political party and who:

- i. satisfies the Commonwealth that it is a respectable, responsible and solvent person, capable of ensuring that the Supplier will comply with this Agreement and that the Transferee's interest in the Prescribed Rights involves no higher security risk to the Commonwealth; and
- ii. procures for the Commonwealth the agreements, indemnities and guarantees reasonably required by the Commonwealth; and
- d. costs: the Supplier pays to the Commonwealth within 10 Business Days of notice, the Commonwealth's reasonable costs (including legal costs) and disbursements of and incidental to the matters referred to in this clause 5.12; and
- e. consent: the Commonwealth provides the Supplier with the Commonwealth's written approval of the proposed dealing.

5.13. Force Majeure

5.13.1. Where a Party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligation under this Agreement and that Party:

- a. gives the other Party prompt notice of that Force Majeure with reasonably full particulars and, if so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- b. uses all reasonable endeavours to remove that Force Majeure as quickly as possible,

then that obligation (the "**Affected Obligation**") is suspended so far as it is affected by the continuance of that Force Majeure. The other Party's obligations to perform any obligations to the extent dependant on the performance of the Affected Obligations will be suspended to that extent only until the Affected Obligations are resumed.

5.13.2. The Supplier will not have the right to and shall not receive any payment of any Fees and Allowances due under this Agreement for Services not performed as a result of any Force Majeure event. For the avoidance of doubt the Supplier has the right to receive any Fees and Allowances due under this Agreement and costs that are payable for Services performed prior to the Force Majeure event.

5.13.3. If a delay or failure of the Supplier to perform its obligations due to an event of Force Majeure that is not caused by the Commonwealth exceeds forty five (45) Business Days, the Commonwealth may immediately terminate this Agreement on providing notice in writing to the Supplier.

5.13.4. If this Agreement is terminated under clause 5.13.3 the Supplier must refund any Fees and Allowances previously paid by the Commonwealth for Services not provided by the Supplier as at the date of termination and both the Supplier and the Commonwealth must comply with their respective obligations under clause 1.25.

5.14. **Termination or reduction in scope without default**

5.14.1. The Commonwealth may by giving the Supplier at least three months' prior notice in writing, terminate this Agreement or reduce the scope of the Services.

5.14.2. Without limiting the scope of clause 5.14.1, the Commonwealth may terminate this Agreement or reduce the scope of the Services if a third party commences the performance of services that are similar to the Services, by giving the Supplier three months' notice.

5.14.3. On receipt of a notice of termination or reduction the Supplier must:

- a. stop or reduce work as specified in the notice;
- b. take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Product; and
- c. continue work on any part of the Services not affected by the notice.

5.14.4. Where there has been a termination under subclause 5.14.1 the Commonwealth will, subject to clause 5.14.6, be liable only for:

- a. payments and assistance under clause 2.1 for Services rendered before the effective date of termination; and
- b. reasonable costs incurred by the Supplier and directly attributable to the termination.

5.14.5. Where there has been a reduction in the scope of the Services:

- a. the Commonwealth's liability to pay Fees or Allowances under clause 2.1 or provide facilities and assistance under clause 2.4 will, unless there is agreement in writing to the contrary, abate proportionately to the reduction in the Services; and
- b. the Commonwealth and the Supplier will review the suitability and ongoing application of the KPIs in accordance with the process set out at clause 1.9.9.

5.14.6. The Commonwealth will not be liable under subclause 5.14.4 in any way for any amount that:

- a. is for loss of prospective profits of the Supplier or any other person; or
- b. would, in addition to any amounts paid or due, or becoming due, to the Supplier under this Agreement, together exceed the Fees.

5.15. **Termination for default**

5.15.1. Where a Party fails to satisfy any of its obligations under this Agreement, the other Party may by notice:

- a. if the failure is not capable of remedy (in the reasonable opinion of that other Party and subject to clause 1.9), terminate this Agreement immediately; or
 - b. if the failure is capable of remedy (in the reasonable opinion of that other Party), require that the failure be remedied within the timeframe specified in the notice and, if not remedied within that time, may terminate this Agreement immediately by giving a second notice.
- 5.15.2. The timeframe specified in any notice to remedy issued under clause 5.15.1.b must be reasonable in consideration of the circumstances of that failure.
- 5.15.3. The Commonwealth may also, by notice, terminate this Agreement immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if:
 - a. any event specified in subclauses 5.15.4.a to f happens to the Supplier;
 - b. the Supplier fails to meet or exceed any KPI for two or more consecutive Quarters;
 - c. the Supplier frequently fails to meet or exceed KPIs which in aggregate has an adverse effect on the Commonwealth or the intended passengers on the Services.
- 5.15.4. The Supplier must notify the Commonwealth immediately if:
 - a. the Supplier being a company, there is any change in control or ownership as described in clause 5.12 without the prior written approval of the Commonwealth;
 - b. the Supplier ceases to carry on business;
 - c. the Supplier ceases to be able to pay the Supplier's debts as they become due;
 - d. the Supplier being a company, enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
 - e. the Supplier being a natural person, is declared bankrupt or assigns the Supplier's estate for the benefit of creditors; or
 - f. the Supplier being a partnership, any step is taken to dissolve that partnership.
- 5.15.5. In this clause, '**controller**', '**managing controller**' and '**administrator**' have the same meanings as in the *Corporations Act 2001* (Cth).
- 5.16. **Dispute Resolution**
- 5.16.1. The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
 - a. firstly, the Party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;

- b. secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
 - c. thirdly, the Parties have 10 Business Days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
 - d. lastly, either Party may commence legal proceedings if:
 - i. there is no resolution or agreement in accordance with clause 5.16.1.c; or
 - ii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days.
- 5.16.2. Each Party will bear its own costs of complying with this clause 5.16, and the Parties will bear equally the cost of any third person engaged under clause 5.16.1.c.
- 5.16.3. Despite the existence of a dispute, the Supplier will (unless requested in writing by the Commonwealth not to do so) continue to perform the Services.
- 5.16.4. This clause 5.16 does not apply to:
- a. action by the Commonwealth under or purportedly under clause 5.14;
 - b. action by either Party under or purportedly under clause 5.15; or
 - c. legal proceedings by either Party seeking urgent interlocutory relief.
- 5.17. **Notices**
- 5.17.1. A notice under this Agreement is only effective if it is in writing, and addressed as follows:
- a. *if given by the Supplier to the Commonwealth* – addressed to the Project Officer at the address stated in Schedule 2, or other address as notified by the Commonwealth; or
 - b. *if given by the Commonwealth to the Supplier* – addressed to the Supplier's Representative at the address stated in Schedule 1, or other address as notified by the Supplier.
- 5.17.2. Any such notice must be delivered to the other Party by hand, prepaid post or transmitted electronically (via email or facsimile) and be signed by the sending Party. For the avoidance of doubt, an electronic signature on an email will be taken to be a signed notice for the purpose of this clause 5.17.
- 5.17.3. Subject to clause 5.17.4, a notice is deemed to be received:
- a. *if delivered by hand* – upon delivery to the relevant address;

- b. *if sent by prepaid post* – upon delivery to the relevant address; or
- c. *if transmitted electronically* – upon receipt by the sender of either an electronic receipt notification (generated by the system transmitting the notice) or an acknowledgement from the other Party that it has received the notice (whichever is earlier).

5.17.4. If a notice is received:

- a. after 5.00 pm on any Business Day; or
- b. on a day that is not a Business Day.

It is deemed to be received at 9:00am on the next Business Day for the purposes of this clause 5.17.

6. Dictionary and Interpretation

6.1. Dictionary

6.1.1. In this Agreement, unless the context indicates otherwise:

Agreement	means this contract, including the Schedules and any attachments.
Allowances	means the allowances (if any) specified in Item E of Schedule 3.
Applicable WHS law	means any applicable occupational health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act).
Auditor-General	has the same meaning as the expression in the <i>Auditor-General Act 1997</i> (Cth) and includes any person authorised to carry out the functions of the Auditor-General under that Act.
Business Day	means a day that is not a Saturday, Sunday, bank holiday or public holiday in the Australian Capital Territory, Australia.
Cargo Report	means a report that complies with the requirements set out in Item A.3 of Schedule 1.
Commonwealth Material	means any Material the Commonwealth provides to the Supplier for the purposes of this Agreement or which is copied or derived from Material so provided.
Commonwealth Personnel	means the Commonwealth's officers, employees, agents and contractors (not including the Supplier).

Confidential Information

means information that:

- (a) is Personal Information;
- (b) is by its nature confidential;
- (c) is designated by a Party as confidential and is described in Schedule 4; or
- (d) is information that is agreed between the Parties in writing after the Date of this Agreement as constituting Confidential Information for the purposes of this Agreement,

but does not include information which:

- (e) is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation; or
- (f) is in a Party's possession without restriction in relation to disclosure before the date of receipt from the other Party in connection with this Agreement, or has otherwise been independently developed or acquired by a Party not in connection with this Agreement, and which in either case can be established by written evidence.

Conflict

means any matter, circumstance, interest or activity affecting the Supplier (including the Supplier's Personnel) which may or may appear to impair the Supplier's ability to provide the Services to the Commonwealth diligently and independently.

Contract Product

means all Material:

- (a) brought into existence for the purpose of performing the Services;
- (b) incorporated in, supplied or required to be supplied along with the material referred to in paragraph (a); or
- (c) copied or derived from material referred to in paragraphs (a) or (b),

but does not include the Supplier's trademarks or trade names.

Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so.
Deliverable	means a specific deliverable (which may include software, hardware, plans and/or documentation) to be supplied by the Supplier under this Agreement and specified in Schedule 1.
Eligible Data Breach	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth).
Financial Report	means a report that complies with the requirements set out in Item A.3 of Schedule 1.
Fees	means the fees payable to the Supplier under this Agreement as specified in Schedule 3, and does not include Allowances.
Force Majeure	means an act of God, fire, volcanic eruptions, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the Party affected, any defects or hazards at the runway, apron, or surrounding airport environment and any other event which is not within the reasonable control of the Party affected (which in the case of the Supplier includes the reasonable control of its permitted subcontractors) but does not include any negligent act or omission of the other Party to this Agreement.
Forward Bookings Report	means a report that complies with the requirements set out in Item A.3 of Schedule 1.
Full Time Equivalent	has the same meaning as the term 'full time equivalent' as defined by the Australian Bureau of Statistics.
General Interest Charge	means the interest charge determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) on the day that payment is due.
GST	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

Information Commissioner	has the same meaning as the expression 'Commissioner' in the <i>Privacy Act 1988</i> (Cth) and includes any person authorised to carry out the functions of the Commissioner.
Intellectual Property	means any copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how) and circuit layout, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Intellectual Property does not include Moral Rights.
Legislative Requirements	means any: <ul style="list-style-type: none"> (a) Act, Ordinance, Regulations, By-law, Order, Award and Proclamations of the Commonwealth or any State or Territory applicable to the Services; or (b) certificate, licence, consent, permit, approval or requirement of an organisation having jurisdiction over matters undertaken in performance of the Services.
Material	means any documents, goods, equipment, software, information and data stored by any means.
Moral Rights	means the rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature, conferred by statute.
Official Information	means any information developed, received or collected by or on behalf of the Commonwealth of Australia through its agencies and contracted providers.
Official Resources	includes: <ul style="list-style-type: none"> (a) Official Information; (b) people who work for or with the Commonwealth; and (c) assets belonging to (even if in the possession of contracted providers) or in the Commonwealth's possession.
Performance Report	means a report that complies with the requirements set out in Item A.3 of Schedule 1.

Period for Services	means the period set out in Item B of Schedule 1.
Personal Information	has the same meaning as in the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	has the same meaning as the expression in the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any person authorised to carry out the functions of the Commissioner under that Act.
Protective Security Policy Framework	means the Australian Government Protective Security Policy Framework issued by the Commonwealth Attorney-General's Department as in force from time to time.
Project Officer	means the person for the time being holding, occupying or performing the duties specified in J.1.
Quarter	means each quarter of the year (commencing 1 January, 1 April, 1 July and 1 October). Where Services are provided for a portion of a quarter, any calculations for that quarter will be made on a pro-rata basis.
Security Classified Information	means Official Information that, if compromised, could have adverse consequences for the Agency.
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.
Services	means the services to be performed by the Supplier as described in Schedule 1 or elsewhere in this Agreement.
Specified Personnel	means the Supplier's Personnel specified in Schedule 1 required to undertake the Services or part of the work constituting the Services.
Supplier	will, where the context so admits, include the Supplier's officers, employees, volunteers, bailees, agents and subcontractors.
Supplier's Personnel	means the Supplier's officers, employees (including Specified Personnel), agents, volunteers, subcontractors or partners that carry out or are to carry out work or perform duties in connection with this Agreement.

Supplier's Representative	means the Supplier's representative named in Schedule 1, and any substitute notified to the Commonwealth from time to time.
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Supplier or the Commonwealth in connection with this Agreement, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.
Transition-out Plan	means a transition-out plan in accordance with the requirements set out in Item D of Schedule 1.
WHS Act	means the <i>Work Health and Safety Act 2011</i> (Cth).

6.2. Interpretation

6.2.1. In this Agreement, unless the contrary intention appears:

- a. the singular includes the plural and vice versa, and a gender includes other genders;
- b. a reference to a clause, subclause, paragraph is to a clause or paragraph of this Agreement.
- c. a reference to this Agreement includes any Schedule or attachment and includes such Schedule or attachment as amended or replaced from time to time by agreement in writing between the Parties;
- d. a reference to a Schedule or attachment is a reference to a Schedule or attachment to this Agreement and includes such Schedule or attachment as amended or replaced from time to time by agreement in writing between the Parties;
- e. a reference to "dollar" or "\$" is a reference to the monetary unit or currency of Australia; and
- f. a reference to time is to Canberra, Australia time.

6.2.2. Clause headings are inserted for convenience only and have no effect in limiting or extending the language of the provisions of this Agreement.

6.2.3. The use of the word "includes" or "including" in relation to a right or obligation of a Party, does not limit or restrict the scope of that right or obligation.

6.2.4. If there is any inconsistency between the terms of this Agreement and the Schedules, the terms of this Agreement take precedence.

6.2.5. If there is any inconsistency between any part of a Schedule and any attachment then the terms of the Schedule takes precedence.

- 6.2.6. A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.
- 6.2.7. A reference to a "Party" or to "Parties" is a reference to parties to this Agreement.
- 6.2.8. A reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time.
- 6.2.9. A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time.
- 6.2.10. Another grammatical form of a defined word or expression has a corresponding meaning.
- 6.2.11. A rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it.
- 6.2.12. If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.
- 6.2.13. Any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally.
- 6.2.14. Any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally.
- 6.2.15. Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.
- 6.3. **Survival**
- 6.3.1. Unless the contrary intention appears, the expiration or earlier termination of this Agreement will not affect the continued operation of any provision relating to:
- a. Confidential Information;
 - b. protection of Personal Information;
 - c. insurance;
 - d. transition-out;
 - e. ownership and licensing of Intellectual Property;
 - f. Moral Rights;
 - g. security;
 - h. dealing with copies;

- i. books and records;
- j. audit and access;
- k. any indemnity,

or any other provision which expressly or by implication from its nature is intended to survive the expiration or earlier termination of this Agreement.

Executed as an Agreement

This Agreement is made on 16 March 2023.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA, as)
represented by the Department of)
Infrastructure, Transport, Regional)
Development, Communications and)
the Arts:

Kim FORBES

Name of signatory

s22(1)(a)(ii)

Signature

s22(1)(a)(ii)

In the presence of:

s22(1)(a)(ii)

Name of witness

Signature of witness

EXECUTED on behalf of **Qantas**)
Airways Limited (ACN 009 661 901) by)
its authorised representative who by)
signing this Agreement represents he or)
she is duly authorised to execute this)
Agreement:

s47F

Name of Authorised Representative

s47F

ative

In the presence of:

s47F

Name of witness

s47F

Signature of witness

SCHEDULE 1 SUPPLIER OBLIGATIONS AND WORK TO BE PERFORMED

A. Services

(Clause 1.1)

A.1. Description of the Services

A.1.1. The Supplier must conduct regular, return, passenger transport and freight services between Brisbane and Sydney and Norfolk Island, with no intermediary stops, in accordance with the routes and service frequency identified in Item A.2 of this Schedule 1.

Aircraft

A.1.2. The Supplier will provide the services using its fleet of B738-800 aircraft with a saleable configuration of 174 seats to provide a freight capacity of up to 1.5 tonnes per flight. Checked baggage must be transported on each flight.

A.1.3. Changes to the aircraft type may be made by mutual agreement between the parties.

Fares and ticketing

A.1.4. All published fares must be available to book on:

- a. the Supplier's website; and
- b. all major Global Distribution Systems.

A.1.5. Subject to the Supplier's right to change its fare rules, fare types and conditions of carriage (provided that those same changes apply to the public generally), the Supplier must ensure that multiple classes of seats and fares are offered on each service.

In-flight entertainment

A.1.6. All passengers must have access to complimentary in-flight entertainment systems and complimentary quality food and beverage offerings suitably aligned to the travelling demographic to and from Norfolk Island.

A.1.7. The parties acknowledge that the Supplier's obligations to provide complimentary in-flight entertainment and food and beverage offerings may be affected where a change in aircraft is agreed in accordance with Item A.1.3 of this Schedule 1.

Interline arrangements

A.1.8. Interline arrangements must be implemented to enable passengers to connect to the Supplier's network of domestic and international destinations (including services with codeshare partners).

Passenger recovery

- A.1.9. The Supplier must implement and maintain processes to ensure that it recovers flights within a reasonable time in the event a scheduled service is disrupted or aircraft become unserviceable.

Medical evacuations and medical suppliers

- A.1.10. The Supplier must ensure that its aircraft has the capacity to support medical evacuations if required (acknowledging that the Supplier will not have primary responsibility for medical evacuations).
- A.1.11. The Supplier must implement and maintain processes to ensure it prioritises carriage of medical supplies and mail over other non-urgent freight products.

Promotion

- A.1.12. The Supplier must work closely and in collaboration with the key Norfolk Island tourism and economic development body to ensure the airline services are visible in promotional and other published materials relating to the Supplier's network.

Ancillary and ground support services

- A.1.13. If required, the Supplier must provide ground and ancillary services directly on Norfolk Island.

A.2. Timetable for the supply of the Services (clause 1.1.1.a and 1.6.1)

- A.2.1. See **Error! Reference source not found.**

A.3. Deliverables and any requirements for those Deliverables (clause 1.8)

- A.3.1. Deliverables includes all reports and plans described in this Item A.3.
- A.3.2. The Supplier must submit the following reports to the Department during the Period for Services together with data underpinning each report:
- a. by the 20th calendar day after each Quarter, a Performance Report that contains the following:
 - i. performance against each KPI, broken down by month;
 - b. by the 20th calendar day after each Quarter, a Financial Report that contains the following:
 - i. revenue performance (Passenger, Cargo and Ancillary), monthly by route;
 - ii. baseline costs including underwrite calculation for the Quarter;
 - iii. passenger numbers and load factor, monthly by route;
 - iv. Target Average Fare and Actual Average Fare, monthly by route;
 - v. breakdown of seats sold by product, monthly by route; and

- c. by the 20th calendar day after each Quarter, a Cargo Report that contains the following:
 - i. cargo volume, monthly by route;
- d. by the 20th calendar day of each month, a Forward Bookings Report that contains the following details for scheduled bookings for the next 6 months:
 - i. scheduled flights, broken down by route and month;
 - ii. scheduled passenger numbers and load factor, monthly by route; and
 - iii. scheduled freight, monthly by route; and
- e. any other reports, information or data (or additional information or data relevant to a report listed above) as requested by the Commonwealth from time to time.

A.3.3. The specific requirements for data that must accompany each report and the form of the reports may be agreed between the Parties during the Period for Services.

A.3.4. The Supplier must develop a Transition-out Plan in accordance with Item D for approval by the Commonwealth and comply with that Transition-out Plan once it has been approved.

A.4. Particular standards for performance of the Services (clause 1.1.1.d)

- A.4.1. The Supplier will perform the Services in conformity with all applicable operational, technical and safety regulatory requirements. The Supplier acknowledges that these requirements include, but are not limited to:
- a. having an approved Transport Security Program under the *Aviation Transport Security Act 2004* (Cth);
 - b. holding the necessary operational approvals from the Civil Aviation Safety Authority (CASA), such as an Air Operator's Certificate (AOC) authorising air transport operations granted under the *Civil Aviation Act 1988* (Cth);
 - c. aircraft and crew operating the flights must be certified by CASA as meeting the necessary Required Navigation Performance (**RNP**) standard to fly the RNP Approaches as published by Airservices Australia, to ensure a greater reliability of flights landing due to inclement weather;
 - d. having adequate insurance which covers passengers, from death or injury and cargo and baggage from loss or damage in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth);
 - e. having adequate insurance which, in accordance with the *Civil Aviation (Carriers Liability) Act 1959* (Cth), covers third parties from death, injury, loss or damage;
 - f. compliance with the *Air Navigation Act 1920* (Cth);
 - g. compliance with the *Biosecurity Act 2015* (Cth);

- h. that all flight crew and cabin crew personnel hold appropriate licences;
- i. that airlines and any third-party maintenance organisations supplying regular passenger transport services are approved under Part 145 of the *Civil Aviation Regulations 1988* (Cth) with associated personnel appropriately licensed; and
- j. having approval for Extended Diversion Time Operations (EDTO), if applicable.

A.5. Key Performance Indicators (KPIs) (clause 1.9)

A.5.1. The Supplier must comply with the following KPIs:

KPI	Basis of Measurement	Target
On-time Performance (This KPI will not apply to delays caused by Force Majeure events)	The average of on-time departures for each Quarter, defined as within 15 minutes of scheduled departure times.	≥ 85 %
Flight Cancellations (This KPI will not apply to delays or cancellations caused by Force Majeure events, or cancellations directed by the Commonwealth)	In any Quarter, the number of departures cancelled from mainland Australia and Norfolk Island (by reference to single sector, rather than return, flights).	≤ 3
Replacement of Services (This KPI will not apply to delays or cancellations caused by Force Majeure events, or cancellations directed by the Commonwealth)	In any month, in the event that an aircraft becomes unserviceable, data confirming that a replacement aircraft has been made available at the scheduled departure port within 8 hours of the scheduled departure time.	≥ 75 %
Target Average Fare	Monthly data showing passenger numbers per sector for all fare types.	s47G(1)(a) for economy class (including GST) and s47G(1)(a) for business class (including GST)
Norfolk Island tourism	Number of promotional and other activities delivered within the relevant Quarter.	<ul style="list-style-type: none"> • Airline services and promotional material related to Norfolk Island is available, current and easily accessible on Qantas Travel Guide – Norfolk Island via Qantas.com at all times • Travel Agent famils in cooperation with Norfolk island Tourism for specialist

Norfolk Island wholesalers (Omniche, Oxley and Norfolk Select. Up to a total of 10 agents per famil. Qantas to support these by offering subsidised fares/subject to availability.

- Work with Norfolk Island Tourism to promote visits to the Island through various QF marketing and promotional channels

Weekly Freight Uplift	Number of flights in a week in which Freight uplift capacity is less than the target.	<p>500kg when number of passengers \geq 75% of maximum passenger capacity</p> <p>1,000kg when number of passengers is between 25% and 75% of maximum passenger capacity</p> <p>1,500kg when number of passengers is \leq 25% of maximum passenger capacity</p>
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A.5.2. The Replacement of Services KPI will be measured monthly and calculated cumulatively across a Quarter, for example, if the KPI is not met in two of the three months in a Quarter, that will constitute two failures to meet the KPI in that Quarter.

A.5.3. If there is any non-performance against the Target Average Fare KPI in any Quarter, the Supplier must provide the Department with a report setting out the level of non-performance and the reasons for that non-performance. The Parties shall then meet to discuss this report and the steps that should be taken as a result (including whether there should be any change to the fares and charges). The Parties agree that this requirement is in addition to the requirement to prepare a remediation plan under clause 1.9.

A.6. Subcontractors

The Supplier may subcontract the performance of parts of the Services as follows:

Part of the Services being subcontracted	Subcontractor	Additional conditions
s47G(1)(a) 		Not applicable

For the avoidance of doubt, the Supplier uses contractors to provide or assist in the provision of ground handling (including above and below-wing services,

loading, freight handling, catering, refuelling), engineering, in-flight entertainment, health evacuations, ticketing, interline services, passenger recovery, promotion and other aspects of the Services. The Commonwealth consents to the use of such contractors.

B. Period for Services

(Clauses 1.1.1.a and 6.1)

- B.1.1. The Period for Services commences on 20 March 2023 and ends on 19 March 2026 (**Initial Period**), unless the Period for Services is extended in accordance with this Agreement.
- B.1.2. The Commonwealth may, in its absolute discretion, extend the Period for Services by:
- a. a period of two years by giving notice to the Supplier at least 180 days prior to the expiry of the Initial Period; and
 - b. a further period of two years by giving notice to the Supplier at least 180 days prior to the expiry of the extended period.
- B.1.3. The Commonwealth is not obliged to extend the Period for Services under clause B.1.2 or to enter into any further agreement with the Supplier for the Services or for any other services.

C. Form of Contract Product

(Clause 1.20.2)

- C.1.1. The Supplier must provide the Contract Product digitally in either .pdf or Microsoft Office format, and sent to the Commonwealth electronically via email at the address set out at Item A.4 of Schedule 2.

D. Transition-out

(Clause 1.25)

- D.1.1. Transition-out
- a. Within twelve (12) months after the Date of this Agreement, the Supplier must develop, in consultation with and for approval by the Department, a Transition-out Plan that will provide for the phased transition out of Services from the Supplier to the Commonwealth or its nominee at the expiration or termination of this Agreement (in whole or part).
 - b. The Transition-out Plan must set out the obligations to be performed by each Party in connection with the orderly transition of Service delivery from the Supplier to the Commonwealth or to an alternative supplier nominated by the Commonwealth, including but not limited to staffing arrangements, records and information management, communications and stakeholder engagement activities.

- c. The Supplier must regularly update the Transition-out Plan to ensure it is at all times consistent with the Services and facilitates the most efficient succession to an alternative supplier.
- d. The Parties will review the Transition-out Plan annually and not less than six months prior to the scheduled expiration of the Agreement to ensure that the Transition-out Plan remains appropriate to the circumstances of the Commonwealth.

E. Specified Personnel

(Clause 1.12)

E.1.1. Not applicable.

F. Invoicing

(Clause 1.14)

F.1.1. The Supplier must invoice the Commonwealth quarterly by the 20th calendar day after the relevant Quarter for all Services provided in that Quarter.

G. Insurance

(Clause 1.17)

G.1.1. From the date of this Agreement, the Supplier must maintain insurances to cover:

Policy	Scope of coverage	Limit of Indemnity
Hull All Risks, Hull War, Spares and Aviation Liability insurance	- HULL (INCLUDING SPARES) ALL RISKS of loss or damage whilst flying and on the ground on an Agreed Value basis - HULL (INCLUDING SPARES) WAR AND ALLIED RISKS in accordance with the Aviation Hull "War and Allied Perils" Policy for an Agreed Value and including Confiscation by the Government of Registration - AIRCRAFT THIRD PARTY, PASSENGER, BAGGAGE, CARGO, MAIL and AIRLINE GENERAL THIRD-PARTY LEGAL LIABILITY	Hull -Agreed Value. Liability for passenger's cargo and third-party liability - Not less than s47G(1)(a)
Industrial Special Risks	Covering all Real and Personal Property belonging to the Insured or for which the Insured is legally responsible to insure	Not less than s47G(1)(a)
Motor Vehicle	All vehicles now or hereafter existing owned, used or operated by the Insured or in which the Insured has an insurable interest	Comprehensive & s47G(1)(a) Third Party property damage
Professional Indemnity	PROFESSIONAL SERVICES: 1) Tour and travel agent; 2) Non-Airline/Non-Aviation Education training; 3) Retail loyalty/gift card program; 4) Data analytical services as provided by Red Planet; 5)	s47G(1)(a)

Non-aviation food catering services (run off effective 31 October 2018)		
Public & Products Liability	Legal Liability to Third Parties for Public and Products Liability in respect of the Insured's non-aviation operations	Not less than s47G(1)(a)
NSW Workers Compensation insurance	WC coverage for all injured by employees for each entity during the insurance period	N/A
QLD Workers Compensation insurance	WC coverage for all injured by employees during the insurance period	N/A
ACT Workers Compensation insurance	WC coverage for all injured by employees for each entity during the insurance period	N/A

G.1.2. The Supplier must maintain professional indemnity (or 'errors and omissions') insurance for an amount of not less than s47G(1)(a) each claim and in the aggregate for all claims in any 12-month policy period throughout the full Period for Services plus seven years.

H. Liquidated Damages (clause 1.5)

- H.1.1. The Supplier must have commenced flights under this Agreement by 20 March 2023.
- H.1.2. Subject to Item H.1.3 and clause 5.13, if the Supplier fails to commence flights on the date in Item H.1.1, liquidated damages of s47G(1)(a) are payable by the Supplier to the Commonwealth for each flight scheduled to operate, but does not operate, between the date in Item H.1.1 and the date that the Supplier actually commences flights under this Agreement.
- H.1.3. For the purposes of Item H.1.1, liquidated damages are not payable when the scheduled flight is delayed but still takes place.

I. Applicable Law

- I.1.1. Australian Capital Territory.

J. The Supplier's Representative and Address (Clauses 5.1 and 5.17)

- J.1. **The Supplier's Representative**
The Supplier's Representative is

s47F – Regional Manager Queensland, PNG and Solomon Islands, Global Sales Australia and Pacific Region

J.2. The Supplier's Address

The Supplier's Postal Address is:

Qantas Airways Limited
Building A, Level 1
10 Bourke Road, Mascot, NSW 2020
Attention: General Counsel

The Supplier's physical address is:

as above

The Supplier's contact details are:

Telephone: s47F

Electronic mail address: s47F@qantas.com.au

SCHEDULE 2 THE COMMONWEALTH'S OBLIGATIONS AND DETAILS

A. The Commonwealth's Address

(Clauses 1.14.2.a and 5.17)

A.1. Invoice address

The Commonwealth's address for invoices is:

Attention: Accounts Payable

The Department of Infrastructure, Transport, Regional Development,
Communications and the Arts

By Email: Invoices@infrastructure.gov.au

By Mail: PO Box 2469, Canberra City ACT 2601

A.2. Postal address for notices

The Commonwealth's postal address for notices is:

The Department of Infrastructure, Transport, Regional Development,
Communications and the Arts

PO Box 2469, Canberra ACT 2601

Attention: Director, Norfolk Island Policy, Territories Division

A.3. Physical address

The Commonwealth's physical address is:

The Department of Infrastructure, Transport, Regional Development,
Communications and the Arts

111 Alinga Street, Canberra ACT 2601

Attention: Director, Norfolk Island Policy, Territories Division

A.4. Contact details

The Commonwealth's contact details are:

Telephone: Director, Norfolk Island Policy s22(1)(a)(ii)

Electronic mail address: s22(1)(a)(ii)@infrastructure.gov.au

B. Project Officer

(Clause 5.1)

B.1.1. The Project Officer will be the person holding, occupying or performing the duties of Assistant Director, Norfolk Island Policy, Territories Division, and any other person designated in writing by that person.

B.1.2. At the time of entering into this Agreement the Project Officer is s22(1)(a)(ii) s22(1)(a)(ii)

C. Not Used

D. Assistance and Facilities
(Clause 2.4)

D.1.1. Not applicable.

SCHEDULE 3 FEES**A. Definitions**

A.1.1. In this Schedule 3, unless the context indicates otherwise:

Baseline Fuel Costs	means the fuel costs for flights, as set out in Item D of this Schedule 3.
Baseline Costs or BC	means the operational costs for flights, as set out in Item D of this Schedule 3, including Baseline Fuel Costs.
Commonwealth Cost Contribution or CCC	s47G(1)(a)
Frequent Flyer Redemption	means the value of the Revenue determined in accordance with C.3 of this Schedule 3.
Qantas Frequent Flyer Program	means the frequent flyer program operated by the Supplier.
Qantas Points	means frequent flyer points awarded by the Supplier in accordance with the terms of its Qantas Frequent Flyer Program.
Revenue	has the meaning given in Item C of this Schedule 3.
Supplier Offset	s47G(1)(a)
Travel Credits	means the value of a travel bank, travel credit, voucher or other accrued entitlement, that the Supplier accepts in consideration of passengers travelling on a flight in lieu of making a cash or credit card payment to the Supplier.
Underwriting Fee or UF	means the amount (if any) payable by the Commonwealth to the Supplier in accordance with this Schedule 3 to underwrite the Services provided by the Supplier under this Agreement.

B. Underwriting Fee

- B.1.1. Subject to the Supplier operating the Services in a fully commercial manner and otherwise complying with this Agreement, the Commonwealth will pay the Underwriting Fee pursuant to this Schedule 3.
- B.1.2. Within 30 days of the end of each Quarter, the Supplier must calculate and provide its detailed calculations to the Commonwealth, in respect of the Services provided in the relevant Quarter:

- a. Revenue;
 - b. Baseline Costs; and
 - c. the Underwriting Fee (if any),
- calculated in accordance with this Schedule 3.

B.1.3. The Underwriting Fee for each Quarter will be calculated as follows:

s47G(1)(a)



B.1.4. Where an Underwriting Fee applies, it will be payable by the Commonwealth within 20 days of receipt of a correctly rendered invoice at the end of each Quarter during the Period for Services issued by the Supplier in accordance with clause 2.1 of this Agreement.

C. Revenue

C.1. Calculation of Revenue

C.1.1. The Supplier's Revenue, in respect of a Quarter, is the total amount that the Supplier receives in consideration of passengers travelling on flights and of freight being transported on flights, including in the form of Frequent Flyer Redemptions, Travel Credits and Allowances, but does not include any amount that the Supplier is required by law to remit to a government authority.

C.2. Ticketing and Freight revenue

C.2.1. The Supplier agrees that it will:

- a. charge passengers, and use best endeavours to collect, in respect of each passenger, amounts that represent a commercially reasonable fare;
- b. charge each freight consignor, and use best endeavours to collect, in respect of each freight consignor, an amount that represents a commercially reasonable freight charge; and
- c. use its best endeavours to maximise the revenue from each flight, while also maximising the number of passengers on each flight, including by selling and distributing each flight on multiple platforms (including its website and third party global distribution systems) and advertising and promoting each flight through multiple platforms and channels.

C.3. Frequent Flyer Redemptions

- C.3.1. Revenue for a flight will be taken to include the Australian dollar value of Qantas Points earned through the Qantas Frequent Flyer Program that the Supplier accepts in consideration of passengers travelling on that flight for up to a maximum of 6 passengers on each flight.
- C.3.2. The value of a Qantas Point will be s47G(1)(a) or any higher amount which represents the average gift card value that a Qantas Point is able to be redeemed for under the Qantas Frequent Flyer Program.
- C.3.3. Where the Supplier accepts Qantas, Points earned through the Qantas Frequent Flyer Program in consideration of passengers travelling on a flight from passengers in excess of the maximum numbers specified in Item C.3.21 (**Excess Frequent Flyer Passengers**), Revenue for that flight will be taken to include for each Excess Frequent Flyer Passenger:
- a. the average of revenue received by the Supplier in respect of each passenger on the flight who did not use Qantas Points in consideration for travelling on the flight; or
 - b. if all passengers on the flight did use Qantas Points in consideration for travelling on the flight, the average of revenue received by the Supplier in respect of each passenger on each flight on the same route during the same Quarter as the flight who did not use Qantas Points in consideration for travelling on the flight.
- C.3.4. The Supplier must ensure that the records it is required to maintain under clause 1.8 and the reports it is required to provide the Commonwealth under Item A.3 of Schedule 1 clearly identify where the Supplier has accepted Qantas Points in consideration of a passenger travelling on a flight and include all details reasonably required by the Commonwealth to verify the calculations of the dollar value of those Qantas Points and the revenue attributed to each passenger from whom the Supplier has accepted Qantas Points in consideration of travelling on a flight.

D. Baseline Costs**D.1. Calculation of Baseline Costs**

- D.1.1. The Supplier's Baseline Costs, in respect of a Quarter, are the operating costs incurred by the Supplier in delivering the Services calculated in accordance with this Item D.
- D.1.2. As at the Date of this Agreement:
- a. the Baseline Costs (excluding Baseline Fuel Costs and excluding GST) are as follows:

s47G(1)(a)

b. the Baseline Fuel Costs (excluding GST) are as follows:

s47G(1)(a)
[Redacted]

D.1.3. The parties acknowledge and agree that the Baseline Costs specified in Item D.1.2.a have been calculated on the basis that:

a. the cost per Available Seat Kilometre (ASK) is s47G(1) (including fuel costs of s47G(1) per ASK); and

b. Baseline Costs cover direct operating costs only such that Baseline Costs:

i. include fuel costs, passenger costs, crew costs, landing and route navigation fees, direct engineering costs, ground handling costs, inflight costs, and selling costs; and

ii. exclude overhead costs, aircraft costs, and any provision for margin or risk return.

D.2. Review of Baseline Costs

D.2.1. The Baseline Costs and any Allowances will be adjusted at the start of each Quarter (starting 1 July 2023) by an amount equal to the variation in the Consumer Price Index for the Weighted Average of Eight Capital Cities (CAT No 6401.1), as published by the Australian Bureau of Statistics using the following formula:

s47G(1)(a)
[Redacted]

D.3. Review of Baseline Fuel Costs

D.3.1. The Baseline Fuel Costs will be reviewed at the start of each Quarter, commencing 1 July 2023) using the following formula:

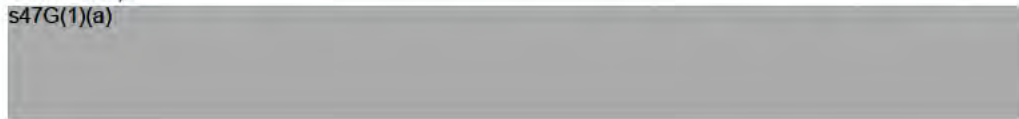
s47G(1)(a)



E. Allowances

E.1.1. In the event a flight is cancelled or modified following a request by the Commonwealth pursuant to clause 1.3.1.a or clause 1.3.1.b (as applicable), and the request was given less than 28 days in advance of the scheduled flight departure date, the Supplier will be entitled to claim the following Allowance (as relevant):

s47G(1)(a)



E.1.2. N/A

E.1.3. The parties acknowledge and agree that, in reaching agreement on the relevant allowance that the Supplier will be entitled to claim in respect of the operation of any additional flight or flights requested by the Commonwealth pursuant to clause 1.3.1.c, the relevant allowance will be capped at:

s47G(1)(a)



offset by the total revenue generated on each additional flight, where total revenue does not exceed the cost of each additional flight.

E.1.4. The allowances specified in this Item E will be subject to indexation in accordance with Item D.2 of this Schedule 3.

SCHEDULE 4 SERVICE SCHEDULE

Subject to:

1. any modifications, cancellations or additions requested by the Agency in accordance with clause 1.3 of the Agreement; and
2. any modifications which are notified to the Commonwealth prior to taking effect and necessary due to changed airport slot availability or access to airport infrastructure, changes to laws or other matters outside the Supplier's control,

the Supplier will conduct six (6) flights per week to Norfolk Island that are regular, return passenger transport and freight services with no intermediary stops. This will comprise:

- a. 3 flights per week from Brisbane on Tuesday, Thursday and Saturday;
- b. 3 flights per week from Sydney on Monday, Friday and Sunday,

in accordance with the Service Schedule detailed below.

Scheduled day	Point of Origin	Destination	Scheduled Departure	Scheduled Arrival
Monday	Sydney Kingsford Smith Airport	Norfolk Island International Airport	10:30	14:10
Monday	Norfolk Island International Airport	Sydney Kingsford Smith Airport	15:10	17:00
Tuesday	Brisbane International Airport	Norfolk Island International Airport	09:30	12:45
Tuesday	Norfolk Island International Airport	Brisbane International Airport	13:45	15:10
Thursday	Brisbane International Airport	Norfolk Island International Airport	07:30	10:45
Thursday	Norfolk Island International Airport	Brisbane International Airport	11:45	13:10
Friday	Sydney Kingsford Smith Airport	Norfolk Island International Airport	10:30	14:10
Friday	Norfolk Island International Airport	Sydney Kingsford Smith Airport	15:10	17:00
Saturday	Brisbane International Airport	Norfolk Island International Airport	09:30	12:45
Saturday	Norfolk Island International Airport	Brisbane International Airport	13:45	15:10
Sunday	Sydney Kingsford Smith Airport	Norfolk Island International Airport	10:30	14:10
Sunday	Norfolk Island International Airport	Sydney Kingsford Smith Airport	15:10	17:00

SCHEDULE 5 CONFIDENTIAL INFORMATION OF THE PARTIES

A. The Commonwealth's Confidential Information

A.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
Nil.	

A.2. Agreement related material

Item	Period of Confidentiality
Nil.	

B. The Supplier's Confidential Information

B.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
Schedule 3 (Fees)	Term of the agreement and any consequent re-tendering period

B.2. Agreement related material

Item	Period of Confidentiality
RFT response Part C3 (Tendered pricing/ commercial offer (cost breakdown)), Part C2 – 2.1 (Key personnel and all referee details), and all other information indicated as 'strictly confidential' in the RFT response.	5 years after the expiration of the Term of the agreement
Disaggregated commercial information	5 years after the expiration of the Term of the agreement
Disaggregated operating performance information	Term of the agreement and any consequent re-tendering period

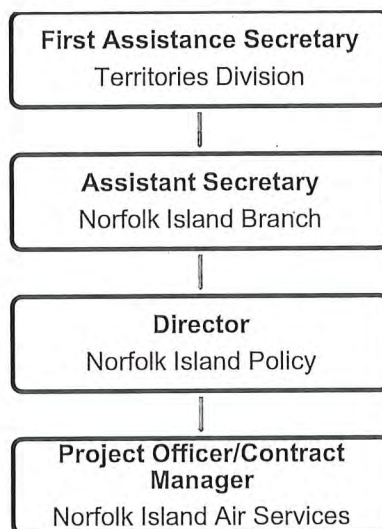
SCHEDULE 6 CONTRACT MANAGEMENT FRAMEWORK

A.1. Philosophy

- A.1.1. The Commonwealth intends to manage the Agreement in an open, honest and collaborative manner and expects the Supplier to reflect this philosophy in its contract management approach.

A.2. Commonwealth's Governance Arrangements

- A.2.1. The Commonwealth's governance arrangements include the following:



A.3. Supplier's Governance Arrangements

- A.3.1. The Supplier's governance arrangements include the following:
- a. The Board has overall responsibility for the governance of risks. Oversight is maintained through the Board's Audit Committee and Safety, Health, Environment and Security Committee (also known as CHESS) (refer to the document "*Qantas corporate governance*" for further detail).
 - b. Group Management System Standard (GMS) is the Supplier's foundation for the effective management of its business, the safety of its operations and the wellbeing of its people. The GMS is a standard which outlines the minimum requirements that the Supplier's Group business unit management systems must meet. By doing so, the Group is better positioned to manage risk, by having a clear set of documented processes and performance criteria which enable the systemic identification and mitigation of risk. (Refer to the document "*Group Management System Standard, ed. 4 (July 2020) v1.0*" for further detail).

A.4. Contract Management

- A.4.1. The parties will establish a contract management/ steering committee ("**SteerCo**") comprising the following (or their delegates):

- a. the Commonwealth's Project Officer/ Contract Manager – Norfolk Island Air Services;
 - b. [Queensland Regional Sales & Development Manager, Qantas]; and
 - c. such other persons nominated by the Commonwealth or the Supplier from time to time.
- A.4.2. The persons referred to in clause A.4.1, or other authorised representatives, must attend meetings of the SteerCo, unless otherwise agreed between the parties.
- A.4.3. The SteerCo will:
- a. review and monitor the reports submitted by the Supplier in accordance with section A.3 of Schedule 1;
 - b. consider and manage risks, performance, quality management, compliments and complaints, Norfolk Island promotional activities, key stakeholder communications; and, otherwise review the strategies and requirements of this Agreement;
 - c. carry out such other functions as are required of it in this Agreement or as agreed between the parties; and
 - d. maintain a Norfolk Island Operations Plan which, supplementing the Supplier's internal policies and procedures, provides information and processes to support Norfolk Island operations.
- A.4.4. Meetings of the SteerCo will be held fortnightly, or at such other intervals as specified by the Commonwealth.
- A.4.5. In addition to meetings of the SteerCo:
- a. senior management of both parties will meet at least once every 6 months, unless otherwise agreed between the parties; and
 - b. any day of operation disruptions, out of hours issues and other ad hoc matters will be communicated to the Commonwealth's Contract Manager as necessary.
- A.4.6. The Supplier must maintain regular engagement with key Norfolk Island stakeholders (including tourism body, council equivalent, travel agents and wholesalers, etc), addressing any concerns to ensure smooth operation of services.

SCHEDULE 7 NOT USED

SCHEDULE 8 INDIGENOUS PARTICIPATION PLAN

The Supplier targets to meet the mandatory minimum requirements at the organisation-based level, by the end of the initial term of the Contract by:

- i. a minimum percentage of the full time equivalent Australian-based workforce must be Indigenous Australians; and
- ii. a minimum percentage of the value of the Tenderer's supply chain must be subcontracted to Indigenous enterprises,

such that both minimum percentages add up to 3 per cent on average over the initial term of the Contract.

The representation of the Supplier's workplace profile is currently 1% while 1% of FY21 contestable spend was with Aboriginal and Torres Strait Islander businesses. The Supplier is on track to reach 1.5% of contestable spend in FY22.

The Supplier intends to uplift these metrics through detailed actions and accountable owners under its 5 strategic pillars:

- i. Sustainable Aboriginal and Torres Strait Islander career;
- ii. Aboriginal and Torres Strait Islander economic development;
- iii. cultural inclusion and celebration;
- iv. creating an Australian customer experience; and
- v. collaboration and accountability.

Refer to the document "Qantas Interim Reconciliation Action Plan – January 2021 – March 2022" for further detail.

Released under the Freedom of Information Act 1982 by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts