

**CONFIDENTIAL**



**Australian Government Solicitor**

**AGREEMENT**

**AGREEMENT IN RELATION TO SUPPORT FOR ONGOING SCHEDULED  
ROUTES**

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

**EXECUTION COPY**

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## AGREEMENT

### AGREEMENT IN RELATION TO SUPPORT FOR ONGOING SCHEDULED ROUTES

#### Date

This Agreement is made on *6 April* 2020.

#### 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 scheduled flights (**Flights**) in order to transport Passengers and Freight between certain destinations, subject to receiving all Regulatory Approvals (**Activity**).
- B. The Agency agrees to pay Qantas the Base Funding and the Variable 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:

|                  |   |
|------------------|---|
| <b>Activity</b>  | means the provision of Flights;   |
| <b>Agency</b>    | 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; |
| <b>Agreement</b> | means this document and includes any schedule;  |

|   |  |
|---|--|
| <b>Airport/s</b>  | 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;   |
| <b>Australian Medical Assistance Teams of the Commonwealth of Australia</b> | 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; |
| <b>Australian Privacy Principle</b>   | has the same meaning as it has in the Privacy Act;   |
| <b>Base Funding</b>   | has the meaning given to that term in Item 5 of the Schedule;  |
| <b>Business Day (in a place)</b>  | means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;  |
| <b>Chief Medical Officer</b>  | means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;  |
| <b>Chief Nursing and Midwifery Officer</b>                                  | means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;  |
| <b>Commencement Date</b>  | means the date on which this Agreement is made;  |
| <b>Correctly Rendered Invoice</b>   | has the meaning given in Item 4 of the Schedule;   |
| <b>Data</b>   | means the data detailed in Item 3 of the Schedule;   |
| <b>Destination</b>  | means the point of destination for a Flight as specified in Item 2 of the Schedule;  |
| <b>Eligible Data Breach</b>   | has the same meaning as it has in the Privacy Act;   |
| <b>Extended End Date</b>  | has the meaning given to that term in Item 1.2 of the Schedule;  |
| <b>Flights</b>  | means the flights detailed in Item 2 of the Schedule;  |
| <b>Force Majeure Event</b>  | means an event not within the reasonable control of Qantas;  |

|                                 |  |
|---------------------------------|--|
| <b>Freight</b>                  | means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;   |
| <b>GST</b>                      | has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);  |
| <b>Initial End Date</b>         | has the meaning given to that term in Item 1.1 of the Schedule;  |
| <b>Laws</b>                     | means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;  |
| <b>Passenger</b>                | means a person who has purchased a ticket on the Flight;   |
| <b>Personal Information</b>     | has the same meaning as it has in the Privacy Act;   |
| <b>Personnel</b>                | means: <ul style="list-style-type: none"> <li>(a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and</li> <li>(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;</li> </ul> |
| <b>Point of Origin</b>          | means the point of origin for a Flight as specified in Item 2 of the Schedule;   |
| <b>Privacy Act</b>              | means the <i>Privacy Act 1988</i> (Cth);   |
| <b>Project Officer</b>          | means Mr Ross Adams, Director of International Air Transport and Trade or any substitute notified to Qantas;   |
| <b>Qantas's Account</b>         | means the account specified in Item 4 of the Schedule;   |
| <b>Qantas Group</b>             | means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));   |
| <b>Qantas Group Company</b>     | means a company in the Qantas Group;   |
| <b>Qantas's Regular Flights</b> | means a flight conducted by Qantas on a commercial basis where no costs are  |

|  |  |
|--|--|
| <b>Regulatory Approvals</b>                      | 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;  |
| <b>Regulatory Requirements</b>                   | means the requirements detailed in Item 7 of the Schedule;   |
| <b>Revenue</b>                                   | 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')); |
| <b>Schedule</b>                                  | means Schedule 1: Details to this Agreement;   |
| <b>Security and Passenger Facilitation Costs</b> | 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;  |
| <b>Special Conditions</b>                        | means the special conditions for a Flight as specified in Item 2 of the Schedule;  |
| <b>Term</b>                                      | has the meaning given to that term in clause 1.4.2;  |
| <b>Timetable Requirements</b>                    | means the timetable requirements for a Flight as specified in Item 2 of the Schedule; and  |
| <b>Variable Funding</b>                          | has the meaning given to that term in Item 6 in Schedule 1.  |

## 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 Initial End Date.
- 1.4.3. The parties may by mutual agreement, extend the Term so that it continues until the Extended End Date. The parties agree that they will consult in good faith in relation to any extension to the Term as soon as possible and will use best endeavours to reach agreement on any extension of the Term at least 7 days prior to the Initial End Date.



## 2. Parties Obligations

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### 2.1. Activity

- 2.1.1. Qantas agrees to undertake the Activity including to:
- a. operate each Flight from the Point of Origin to the Destination or, where the Destination is in Australia to an alternative location in Australia (subject to prior arrangement and agreement by Qantas);
  - b. operate each Flight according to the Timetable Requirements; 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, there will be no in-flight entertainment and the Qantas Frequent Flyer program will not apply 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 Base Funding or Variable 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* 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 prioritise the acceptance and transport of particular Passengers or 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 Security and Passenger Facilitation Costs 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.

## **3. Confidentiality**

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### **3.1. Confidentiality**

- 3.1.1. 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 the 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**

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##### **4.1. Payment of Base Funding**

- 4.1.1. Qantas represents and warrants that the Base Funding amounts together with the Variable 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.
- 4.1.2. Subject to receipt of a Correctly Rendered Invoice, the Agency agrees to pay to Qantas the Base Funding in accordance with Item 5 of Schedule 1.

##### **4.2. Payment of Variable Funding**

- 4.2.1. Subject to receipt of a Correctly Rendered Invoice and the Data, the Agency agrees to pay to Qantas the Variable Funding in accordance with Item 6 of Schedule 1.

##### **4.3. Security and Passenger Facilitation Costs**

- 4.3.1. Qantas and the Agency will work together in good faith to minimise the Security and Passenger Facilitation Costs.

##### **4.4. Funding Cap**

- 4.4.1. Qantas agrees that other than the Agency's liability for the Base Funding and the Variable 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.

- 4.4.2. The Agency's total liability to Qantas (including Qantas Group Companies) for the Base Funding will be limited to \$51 242 488 in aggregate in respect of the Activity between the Commencement Date and the Initial End Date.
- 4.4.3. The Agency's total liability for the Variable Funding will not exceed \$16 357 516 in aggregate in respect of the Activity between the Commencement Date and the Initial End Date, except and then only to the extent that total Security and Passenger Facilitation Costs exceed total Revenue.
- 4.5. Taxes and duties**
- 4.5.1. 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.
- 4.5.2. 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.
- 4.5.3. 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 or reduction in scope**

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### **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 - may, by notice, terminate the Agreement immediately; or
  - b. capable of remedy - 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**

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- 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

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### 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**

s47F

7.1.4. The address for Qantas is:

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

**Postal address** As above

**Email**

s47F

## **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**

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### **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.

**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**

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

CHRISTINE DACEY

Name of Delegate

s47F

Signature of Delegate

In the presence of:

s47F

Name of witness

Signature of witness

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

\_\_\_\_\_  
Name of authorised  
representative

\_\_\_\_\_  
Signature of authorised  
representative

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Signature of witness

## SCHEDULE 1 DETAILS

### 1. Term

- 1.1. Initial End Date means 4 calendar weeks from the first Flight provided by Qantas under this Agreement.
- 1.2. Extended End Date means any date to be agreed by the parties in accordance with clause 1.4.3.

### 2. Flights

| Flight                              | Timetable Requirements      | Point of Origin | Destination | Special Conditions                     |
|-------------------------------------|-----------------------------|-----------------|-------------|--|
| Flight from Brisbane to Los Angeles | 1 flight per calendar week  | Brisbane        | Los Angeles |  |
| Flight from Los Angeles to Brisbane | 1 flight per calendar week  | Los Angeles     | Brisbane    |  |
| Flight from Melbourne to London     | 1 flight per calendar week  | Melbourne       | London      | Flight to operate via Perth, Australia |
| Flight from London to Melbourne     | 1 flight per calendar week  | London          | Melbourne   | Flight to operate via Perth, Australia |
| Flight from Brisbane to Hong Kong   | 2 flights per calendar week | Brisbane        | Hong Kong   |  |
| Flight from Hong Kong to Brisbane   | 2 flights per calendar week | Hong Kong       | Brisbane    |  |
| Flight from Melbourne to Hong Kong  | 2 flights per calendar week | Melbourne       | Hong Kong   |  |
| Flight from Hong Kong to Melbourne  | 2 flights per calendar week | Hong Kong       | Melbourne   |  |

|                                   |                             |           |           |  |
|-----------------------------------|-----------------------------|-----------|-----------|--|
| Flight from Brisbane to Auckland  | 2 flights per calendar week | Brisbane  | Auckland  |  |
| Flight from Auckland to Brisbane  | 2 flights per calendar week | Auckland  | Brisbane  |  |
| Flight from Melbourne to Auckland | 2 flights per calendar week | Melbourne | Auckland  |  |
| Flight from Auckland to Melbourne | 2 flights per calendar week | Auckland  | Melbourne |  |

- Calendar week means the period of 7 calendar days commencing 9 April and each subsequent period of 7 calendar days (or a later or earlier date if agreed between the parties).

### **3. Data**

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- 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. Any other information the Agency reasonably requires in order to validate the Security and Passenger Facilitation Costs (including that Qantas has paid the amount being claimed by Qantas) and the Revenue in relation to the relevant invoice.

### **4. Invoices**

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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 the Base Funding or Variable Funding instalment or the Security and Passenger Facilitation Costs (whichever is relevant to the invoice);
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

## **5. Base Funding**

---

The Agency will pay Qantas in respect of the Activity the following amounts on the following dates:

1. \$ 12,810,622 on 15 April 2020 (in respect of Activity period: 9 April 2020-15 April 2020);
2. \$ 12,810,622 on 22 April 2020 (in respect of Activity period: 16 April 2020 -22 April 2020);
3. \$ 12,810,622 on 29 April 2020 (in respect of Activity period 23 April 2020-29 April 2020); and
4. \$ 12,810,622 on 6 May 2020 (in respect of Activity period 30 April 2020 -6 May 2020).

The total amount payable as Base Funding will be \$51,242,488 between the Commencement Date and the Initial End Date, and then as agreed in relation to any Flights between the Initial End Date and the Extended End Date (the **Base Funding**).

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

Commonwealth Bank of Australia

BSB: 064 000

Account: 10438527

Name: Qantas Airways Limited

## **6. Variable Funding**

---

The Agency will pay to Qantas in respect of the Activity the following:

1. No later than 22 April:
  - a. \$4,089,379 less Revenue in respect of Flights undertaken between 7 April 2020 and 15 April 2020; and
  - b. An amount equal to Security and Passenger Facilitation Costs paid by Qantas during that period.
2. No later than 29 April:
  - a. \$4,089,379 less Revenue in respect of Flights undertaken between 16 April 2020 and 22 April 2020; and

- b. An amount equal to Security and Passenger Facilitation Costs paid by Qantas during that period;
3. No later than 6 May 2020:
  - a. \$4,089,379 less Revenue in respect of Flights undertaken between 23 April 2020 and 29 April 2020; and
  - b. An amount equal to Security and Passenger Facilitation Costs paid by Qantas during that period;
4. No later than 13 May 2020:
  - a. \$4,089,379 less Revenue in respect of Flights undertaken between 30 April 2020 and 6 May 2020; and
  - b. An amount equal to Security and Passenger Facilitation Costs paid by Qantas during that period.
5. An amount equal to Security and Passenger Facilitation Costs paid by Qantas in respect of which the Agency has not already made a payment under sub-items 1, 2, 3 or 4. The Agency will pay this amount no later than 7 days after receipt of a Correctly Rendered Invoice in respect of this amount.

The total amount payable as Variable Funding will be \$16,357,516 plus Security and Passenger Facilitation Costs less Revenue for the period between the Commencement Date and the Initial End Date, and then as agreed in relation to any Flights between the Initial End Date and the Extended End Date (the **Variable Funding**).

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

Commonwealth Bank of Australia

BSB: 064 000

Account: 10438527

Name: Qantas Airways Limited

## **7. Regulatory Requirements**

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- 7.1. 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);
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth); and
- h. any similar or equivalent Laws or regulations of foreign authorities.

## **8. Proposed Flight Schedule**

---

The provision of the Flights on the current proposed schedule under Item 2 is subject to:

- slot availability and overflight approvals;
- confirmation of all Regulatory Approvals;
- standing-up requirements of Qantas and its supplier's workforces – both in Australia and internationally;
- safety and operational risk assessments by Qantas;
- exemption for all Qantas crew from quarantine measures (in Australia and internationally);
- availability of aircraft parking at London Heathrow Airport to enable minimum crew rest requirements (in respect of the London Flights only); and
- determination of final LOPA for onboard social distancing requirements.

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

**CONFIDENTIAL**



**Australian Government Solicitor**

**AGREEMENT**

**AGREEMENT IN RELATION TO SUPPORT FOR ONGOING SCHEDULED  
ROUTES**

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

Virgin Australia Airlines Pty Ltd  
ABN 36 090 670 965 ACN 090 670 965

**EXECUTION COPY**

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**CONFIDENTIAL**

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## AGREEMENT

### AGREEMENT IN RELATION TO SUPPORT FOR ONGOING SCHEDULED ROUTES

#### Date

This Agreement is made on *4 April* 2020.

#### 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. **Virgin Australia Airlines Pty Ltd ABN 36 090 670 965 ACN 090 670 965**  
56 Edmondstone Road, Bowen Hills Queensland 4006, Australia (Virgin)

#### Context

This Agreement is made in the following context:

- A. Virgin has agreed to operate scheduled flights (**Flights**) in order to transport Passengers and Freight between destinations specified by the Agency (**Activity**).
- B. Virgin requires that the Agency pay to Virgin the costs of Virgin of providing each Flight, net of the payments that Virgin receives for transporting Passengers and Freight for that Flight.
- C. The Agency agrees to pay Virgin's costs of providing each Flight that Virgin operates 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:

|                  |  |
|------------------|--|
| <b>Activity</b>  | means the provision of Flights;  |
| <b>Agency</b>    | includes any department, agency or authority of the Commonwealth of Australia which is from time to time responsible for administering this Agreement; |
| <b>Agreement</b> | means this document and includes any schedule;   |

|   |  |
|---|--|
| <b>Australian Medical Assistance Teams of the Commonwealth of Australia</b> | 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; |
| <b>Australian Privacy Principle</b>   | has the same meaning as it has in the Privacy Act;   |
| <b>Business Day (in a place)</b>  | means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;  |
| <b>Chief Medical Officer</b>  | means the person who occupies, or is acting, the position of Commonwealth Chief Medical Officer;   |
| <b>Chief Nursing and Midwifery Officer</b>                                  | means the person who occupies, or is acting, the position of Commonwealth Chief Nursing and Midwifery Officer;   |
| <b>Commencement Date</b>  | has the meaning given to that term in Item 1.1 of the Schedule;  |
| <b>Correctly Rendered Invoice</b>   | has the meaning given in Item 4 of the Schedule;   |

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|                             |  |
|-----------------------------|--|
| <b>Data</b>                 | means the data detailed in Item 3 of the Schedule;                         |
| <b>Destination</b>          | means the destination for a Flight as specified in Item 2 of the Schedule; |
| <b>Eligible Data Breach</b> | has the same meaning as it has in the Privacy Act;                         |
| <b>Extended End Date</b>    | has the meaning given to that term in Item 1.3 of the Schedule;            |
| <b>Flights</b>              | means the flights detailed in Item 2 of the Schedule;                      |

|                            |  |
|----------------------------|--|
| <b>Force Majeure Event</b> | means an event not within the reasonable control of Virgin;  |
| <b>Freight</b>             | means goods including mail, other than baggage or stores related to the Flight, that are transported on the Flights; |
| <b>GST</b>                 | has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);                  |
| <b>Initial End Date</b>    | has the meaning given to that term in Item 1.2 of the Schedule;  |
| <b>Laws</b>                | means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;      |

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|                             |  |
|-----------------------------|--|
| <b>Passenger</b>            | means a person who has purchased a ticket on the Flight;   |
| <b>Personal Information</b> | has the same meaning as it has in the Privacy Act;   |
| <b>Personnel</b>            | means: <ul style="list-style-type: none"> <li>(a) in relation to Virgin - any natural person who is an officer, employee, agent or professional advisor of Virgin or of its subcontractors; and</li> <li>(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;</li> </ul> |
| <b>Point of Origin</b>      | means the point of origin for a Flight as specified in Item 2 of the Schedule;   |
| <b>Privacy Act</b>          | means the <i>Privacy Act 1988</i> (Cth);   |
| <b>Project Officer</b>      | means Mr Ross Adams, Director of International Air Transport and Trade or any substitute notified to Virgin;   |

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|                                 |   |
|---------------------------------|---|
| <b>Regulatory Approvals</b>     | means regulatory approvals required to be obtained from Australian or foreign governments for the valid and lawful conduct of the Activity;   |
| <b>Regulatory Requirements</b>  | means the requirements detailed in Item 6 of the Schedule;  |
| <b>Schedule</b>                 | means Schedule 1: Details to this Agreement;  |
| <b>Special Conditions</b>       | means the special conditions for a Flight as specified in Item 2 of the Schedule;   |
| <b>Term</b>                     | has the meaning given to that term in clause 1.4.2;   |
| <b>Ticket Fare</b>              | has the meaning given to that term in clause 2.2.1;   |
| <b>Timetable Requirements</b>   | means the timetable requirements for a Flight as specified in Item 2 of the Schedule;   |
| <b>Traveller Emergency Loan</b> | means amounts paid to Virgin by the Commonwealth of Australia under the any traveller emergency loan administered by the Commonwealth Department of Foreign Affairs and Trade;  |
| <b>Virgin's Account</b>         | means the account specified in Item 5 of the Schedule;  |
| <b>Virgin Group</b>             | means Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth)) and Virgin Australia International Airlines Pty Ltd ACN and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth)); |
| <b>Virgin Group Company</b>     | means a company in the Virgin Group; and  |
| <b>Virgin's Regular Flights</b> | means a flight conducted by Virgin on a commercial basis where no costs are covered by the Agency or the Commonwealth of Australia more broadly.  |

## 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 an Item is a reference to an Item in the Schedule;
- f. the Schedule forms part of this Agreement;
- g. 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;
- h. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- i. 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;
- j. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- k. any reference to money is a reference to Australian dollars.

### **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 Initial End Date.
- 1.4.3. The Agency may in its absolute discretion extend the Term so that it continues until the Extended End Date by giving written notice to Virgin of that extension 7 days prior to the Initial End Date.

## **2. Obligations on Virgin**

---

### **2.1. Activity**

- 2.1.1. Virgin agrees to undertake the Activity including to:
- a. subject to any contrary provision in this Agreement, operate each Flight to the same standards and in a manner comparable to Virgin's Regular Flights including the provision of ground handling services;
  - b. operate each Flight from the Point of Origin to the Destination or, where the Destination is in Australia, to an alternative location in Australia as advised by the Agency in writing;
  - c. operate each Flight according to the Timetable Requirements; and
  - d. operate each Flight in compliance with any Special Conditions.
- 2.1.2. Virgin will be solely responsible for conducting the Activity, including to obtain all relevant Regulatory Approvals and to ensure that Virgin and Virgin Personnel undertake the Activity:
- a. in accordance with all applicable Laws and Regulatory Requirements; and
  - b. in accordance with all relevant health directives relating to COVID-19 including fact sheets issued from time to time by the Commonwealth Department of Health and any reasonable directions issued to Virgin (including Virgin Personnel) during the Flight by the Chief Medical Officer, Chief Nursing and Midwifery Officer or members of the Australian Medical Assistance Teams of the Commonwealth of Australia.
- 2.1.3. Virgin acknowledges that any Passenger or Freight consignor who utilises the Flights does so pursuant to a contract of carriage or waybill entered into between Virgin and the Passenger or freight forwarder respectively.
- 2.1.4. Virgin further acknowledges that in operating the Flights it is the carrier for all purposes including the *Civil Aviation (Carriers Liability) Act 1959* and any international conventions and the Agency is not to be regarded for any purposes as the carrier, as operating the aircraft or as acting as agent for Virgin.
- 2.1.5. Virgin agrees that it will comply with any written direction from the Agency to prioritise the acceptance and transport of particular Passengers or particular Freight on a Flight.
- 2.1.6. Virgin will not subcontract the provision of any part of the Activity other than to another Virgin Group Company without the prior approval of the Agency.

### **2.2. Ticket and Freight Pricing**

- 2.2.1. Virgin agrees that it will charge Passengers, and use best endeavours to collect, in respect of each Passenger an amount (**Ticket Fare**) that represents a commercially reasonable economy fare from the Point of Origin to the Destination.

2.2.2. Virgin agrees that it will charge the 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.

2.2.3. For the avoidance of doubt Virgin will not charge Passengers in respect of a Flight any amount for the costs of flying or otherwise transporting the relevant aircraft to the Point of Origin for that Flight.

### **2.3. Data and other information**

2.3.1. Virgin agrees to provide the Data to the Agency regarding each Flight operated by Virgin:

- a. in a form reasonably required by the Agency;
- b. no later than 5 days after the arrival of each Flight.

2.3.2. Virgin agrees to provide to the Agency any other information regarding the Activity and this Agreement reasonably required by the Agency from time to time.

### **2.4. Records**

2.4.1. Virgin agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the Agency under this Agreement to be determined.

## **3. Confidentiality**

---

### **3.1. Confidentiality**

3.1.1. Virgin will not, without prior written authorisation of the Agency, disclose the terms or the existence 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).

3.1.2. Virgin acknowledges that any failure to fully comply with any of its obligations under this clause 3 may, for the purposes of clause 5.2 be treated by the Agency at its absolute discretion as a failure that is not capable of remedy.

### **3.2. Confidential Information of Virgin**

3.2.1. The Agency will not be restricted at any time from disclosing the details of this Agreement and any information including Data received by the Agency in connection with this Agreement:

- a. to the Agency's Personnel in order to comply with its obligations, or to exercise its rights, under this Agreement;
- b. to the Agency's 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 Net Costs**

- 4.1.1. Subject to clause 4.2, the Agency agrees to pay to Virgin the Net Costs it incurs in respect of each Flight.
- 4.1.2. The Agency may defer a payment to Virgin in respect of a Flight if and for so long as it reasonably considers Virgin to be in breach of this Agreement.
- 4.1.3. Virgin agrees that other than its liability for the Net Costs under clause 4.1.1, the Agency and the Commonwealth of Australia will have no liability under or in connection with the Activity and this Agreement.

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##### **4.3. Claims for Payment**

- 4.3.1. The Agency will make any payment due under this Agreement to Virgin's Account within 30 days, subject to receipt by the Project Officer of:
  - a. a Correctly Rendered Invoice; and
  - b. any supporting documents reasonably required by the Agency, including to substantiate the Net Costs that have been incurred by Virgin.

##### **4.4. Taxes, duties and government charges**

- 4.4.1. Except as provided by this clause 4.4, Virgin agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

- 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 or reduction in scope**

---

### **5.1. Termination for convenience**

- 5.1.1. The Agency may on 7 days prior written notice, in its absolute discretion, terminate this Agreement or reduce the scope of the Activity immediately.
- 5.1.2. Virgin agrees, on receipt of a notice of termination or reduction:
  - a. to stop or reduce the Activity as specified in the notice;
  - b. to take all available steps to minimise loss resulting from that termination or reduction; and
  - c. to continue to provide on any part of the Activity not affected by the notice.
- 5.1.3. In the event of termination under clause 5.1.1, the Agency will be liable only:
  - a. subject to clause 4.2, to pay any Net Costs in accordance with clause 4.1 incurred before the effective date of termination; and
  - b. subject to clause 4.2, to reimburse any expenses Virgin unavoidably incurs relating entirely to the Activity not covered under clause 5.1.3.a.
- 5.1.4. In the event of a reduction in the scope of the Activity under clause 5.1.1, the Agency's liability to pay Net Costs under clause 5.1.3.a and clause 4.1 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 5.1.5. In no case will the Agency be liable for loss of prospective profits in connection with a Flight that is not operated by Virgin.

### **5.2. Termination for fault**

- 5.2.1. If a party fails to satisfy any of its obligations under this Agreement, then the other party - if it considers that the failure is:
  - a. not capable of remedy - may, by notice, terminate the Agreement immediately; or
  - b. capable of remedy - may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice.

- 5.2.2. 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 Virgin 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 Virgin is unable, wholly or in part, by reason of Force Majeure Event, to carry out any obligation under this Agreement and Virgin:
- a. gives the Agency prompt notice of that Force Majeure Event with reasonably full particulars thereof, and insofar as known, the probable extend 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.
- 6.1.2. The Agency will be under no obligation to pay any Net Costs in respect of a Flight that does not proceed due to a Force Majeure Event.

## **7. Notices**

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### **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 Virgin 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 Virgin* - 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 Virgin.
- 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** s47F

7.1.4. The address for Virgin is:

**Physical address** 56 Edmondstone Road  
Brisbane Qld 4006

**Postal address** PO Box 1034  
Spring Hill Qld 4004

**Email** s47F

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

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

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

### 8.2. Work health and safety

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

- a. all relevant 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, Virgin will comply with those policies and procedures that produce the highest level of health and safety.

### 8.3. Privacy

- 8.3.1. Virgin 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 which, if done or engaged in by the Agency, would be a breach of an Australian Privacy Principle under the Privacy Act.
- 8.3.2. If Virgin 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 Virgin as a result of its undertaking the Activity, Virgin 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 Virgin is aware that there are reasonable grounds to believe there has been, or where the Agency notifies Virgin that there has been, an Eligible Data Breach in relation to any Personal Information held by Virgin as a result of its undertaking the Activity, Virgin 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. Virgin 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. Virgin 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.
- 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. Virgin cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Agency'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.

**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**

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

CHRISTINE DACEY

Name of Delegate

s47F

Signature of Delegate

In the presence of:

Hilary Manson

Name of witness

s47F

Signature of witness

EXECUTED on behalf of **Virgin  
Australia Airlines Pty Ltd**  
**ACN 090 670 965** by its duly  
authorised representative:

s47F

Name of authorised  
representative

Signature of authorised  
representative

s47F

Name of witness

Signature of witness

**SCHEDULE 1 DETAILS****1. Term**

- 1.1. Commencement Date means 8 April 2020.
- 1.2. Initial End Date means 6 May 2020.
- 1.3. Extended End Date means the date notified by the Agency.

**2. Flights**

| Flight                              | Point of Origin | Destination | Special Conditions  |
|-------------------------------------|-----------------|-------------|---|
| Flight from Brisbane to Los Angeles | Brisbane        | Los Angeles | Flights must not be scheduled to depart on the same day as flights operated from Australia to Los Angeles by Qantas |
| Flight from Los Angeles to Brisbane | Los Angeles     | Brisbane    | Flights must not be scheduled to depart on the same day as flights operated from Los Angeles to Australia by Qantas |
| Flight from Brisbane to Hong Kong   | Brisbane        | Hong Kong   | Flights must not be scheduled to depart on the same day as flights operated from Australia to Hong Kong by Qantas   |
| Flight from Hong Kong to Brisbane   | Hong Kong       | Brisbane    | Flights must not be scheduled to depart on the same day as flights operated from Hong Kong to Australia by Qantas   |

**3. Data**

- 3.1. The number of Passengers that 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.

**4. Invoices**

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

- a. the words "tax invoice" stated prominently;
- b. Virgin'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. details of the relevant Costs and Receipts;
- g. the total amount payable (including GST);
- h. the GST amount (if any) shown separately; and
- i. written certification in a form acceptable to the Agency that Virgin has paid all remuneration, fees or other amounts payable to its Personnel involved in performance of the Agreement.

All claims for Net Costs must be supported by receipts or other documentation as reasonably required by the Agency which clearly substantiate Virgin's entitlement to those Net Costs in accordance with the terms of this Agreement including details of ticket prices, number of Passengers travelling on the Flight, revenue from and the amount of Freight being transported on the Flight and details of any money received or entitlements under the Traveller Emergency Loan.

An invoice is not correctly rendered where:

- a. it includes amounts that are not properly payable under this Agreement or are incorrectly calculated; or
- b. it relates to a payment in relation to which the Agency has exercised its rights under clause 4.1.2 of the Agreement.

**5. Virgin's Account**

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Account Name: Virgin Australia Airlines Pty Ltd

BSB: 014002

Account No: 837087398

Bank: ANZ Bank, Australia

## 6. Regulatory Requirements

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- 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)*;
  - g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015 (Cth)*; and
  - h. any similar or equivalent Laws or regulations of foreign authorities.

**CONFIDENTIAL**



*Australian Government Solicitor*

**AGREEMENT**

**AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS**

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

**EXECUTION COPY**

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**CONFIDENTIAL**

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## **AGREEMENT**

### **AGREEMENT IN RELATION TO SUPPORT FOR UNSCHEDULED FLIGHTS**

#### **Date**

This Agreement is made on 2020.

#### **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:

|                  |   |
|------------------|---|
| <b>Activity</b>  | means the provision of Flights;   |
| <b>Agency</b>    | 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; |
| <b>Agreement</b> | means this document and includes any schedule;  |
| <b>Airport/s</b> | 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;  |

|   |  |
|---|--|
| <b>Australian Medical Assistance Teams of the Commonwealth of Australia</b> | 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; |
| <b>Australian Privacy Principle</b>   | has the same meaning as it has in the Privacy Act;   |
| <b>Business Day (in a place)</b>  | means a weekday other than a public holiday in the place specified or, if no place is specified, in the Australian Capital Territory;  |
| <b>Chief Medical Officer</b>  | means the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer;  |
| <b>Chief Nursing and Midwifery Officer</b>                                  | means the person who occupies, or is acting in, the position of Commonwealth Chief Nursing and Midwifery Officer;  |
| <b>Commencement Date</b>  | means the date on which this Agreement is made;  |
| <b>Conditions Precedent</b>   | means the conditions precedent to the Flights as set out in Item 7 of Schedule 1;  |
| <b>Correctly Rendered Invoice</b>   | has the meaning given in Item 4 of the Schedule;   |
| <b>Data</b>   | means the data detailed in Item 3 of the Schedule;   |
| <b>Destination</b>  | means the point of destination for a Flight as specified in Item 2 of the Schedule;  |
| <b>Eligible Data Breach</b>   | has the same meaning as it has in the Privacy Act;   |
| <b>End Date</b>   | has the meaning given to that term in Item 1.1 of the Schedule;  |
| <b>Flights</b>  | means the flight or flights detailed in Item 2 of the Schedule;  |
| <b>Force Majeure Event</b>  | means an event not within the reasonable control of Qantas;  |

|                                 |  |
|---------------------------------|--|
| <b>Freight</b>                  | means goods including mail, other than Passenger baggage or stores related to the Flight, that are transported on the Flights;   |
| <b>Funding</b>                  | has the meaning given to that term in Item 5 in Schedule 1;  |
| <b>GST</b>                      | has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);  |
| <b>Laws</b>                     | means all applicable laws of any foreign governments, the Commonwealth of Australia or of a State or Territory;  |
| <b>Passenger</b>                | means a person who has purchased a ticket on the Flight;   |
| <b>Personal Information</b>     | has the same meaning as it has in the Privacy Act;   |
| <b>Personnel</b>                | means: <ul style="list-style-type: none"> <li>(a) in relation to Qantas - any natural person who is an officer, employee, agent or professional advisor of Qantas or of its subcontractors; and</li> <li>(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;</li> </ul> |
| <b>Point of Origin</b>          | means the point of origin for a Flight as specified in Item 2 of the Schedule;   |
| <b>Privacy Act</b>              | means the <i>Privacy Act 1988</i> (Cth);   |
| <b>Project Officer</b>          | means Mr Ross Adams, Director of International Air Transport and Trade or any substitute notified to Qantas;   |
| <b>Qantas Group</b>             | means Qantas Airways Limited (ABN 16 009 661 901) and its related bodies corporate (as defined in the <i>Corporations Act 2001</i> (Cth));   |
| <b>Qantas Group Company</b>     | means a company in the Qantas Group;   |
| <b>Qantas's Regular Flights</b> | 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;   |
| <b>Regulatory Approvals</b>     | means regulatory approvals required to be obtained from Australian or foreign  |



|  |  |
|--|--|
|  | governments and Airports for the valid and lawful conduct of the Activity;   |
| <b>Regulatory Requirements</b>                   | means the requirements detailed in Item 6 of the Schedule;   |
| <b>Revenue</b>                                   | 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')); |
| <b>Schedule</b>                                  | means Schedule 1: Details to this Agreement;   |
| <b>Scheduled Departure Time</b>                  | means the scheduled departure time for a Flight as specified in Item 2 of the Schedule;  |
| <b>Security and Passenger Facilitation Costs</b> | 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;  |
| <b>Special Conditions</b>                        | means the special conditions for a Flight as specified in Item 2 of the Schedule; and  |
| <b>Term</b>                                      | 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 or, where the Destination is in Australia to an alternative location in Australia (subject to prior arrangement and agreement by Qantas);
  - 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, there will be no in-flight entertainment and the Qantas Frequent Flyer program will not apply 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* 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 reserve 30 seats on the Lima-Brisbane Flight from the opening of ticket sales until 36 hours before the scheduled departure of that Flight, and ensure that the seats are available for use by a particular Passenger/s on that Flight as notified to Qantas by the Agency no later than 36 hours before the scheduled departure.
- 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 Security and Passenger Facilitation Costs 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.

## **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 and the specification of those amounts has excluded any costs that have been factored into the specification of the Base or Variable Funding under the agreement in relation to Support for Ongoing Scheduled Routes.
- 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. Qantas and the Agency will work together in good faith to minimise the Security and Passenger Facilitation Costs.
- 4.2.2. Notwithstanding any other provision in this Agreement, the Agency's total liability for Security and Passenger Facilitation Costs under this Agreement will not exceed \$500,000.

### **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. 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.
- 4.4.2. 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.
- 4.4.3. 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 - may, by notice, terminate the Agreement immediately; or
  - b. capable of remedy - 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**

s47F

7.1.4. The address for Qantas is:

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

**Postal address** As above

**Email**

s47F

**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**

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### **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**

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

CHRISTINE DAERY

Name of Delegate

s47F

In the presence of:

Janet Quigley

Name of witness

s47F

*Signature of witness*

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

\_\_\_\_\_  
Name of authorised  
representative

\_\_\_\_\_  
*Signature of authorised  
representative*

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*

## SCHEDULE 1 DETAILS

### 1. Term

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

### 2. Flights

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| Flight                       | Scheduled Departure Time (local time) | Point of Origin | Destination | Special Conditions                        |
|------------------------------|---------------------------------------|-----------------|-------------|---|
| Flight from Sydney to Lima   | 12 April 2020                         | Sydney          | Lima        | No freight will be carried on the Flight. |
| Flight from Lima to Brisbane | 13 April 2020                         | Lima            | Brisbane    | No freight will be carried on the Flight. |

### 3. Data

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- 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. Any other information the Agency reasonably requires in order to validate the Security and Passenger Facilitation Costs (including that Qantas has paid the amount being claimed by Qantas) and the Revenue in relation to the relevant invoice.

### 4. Invoices

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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 Costs payable;
- g. the total amount payable (including GST); and
- h. the GST amount (if any) shown separately.

## **5. Funding**

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The Agency will pay to Qantas in respect of the Activity the following amounts:

- a. \$1,050,000.00 less Revenue in respect of the Flights; and
- b. An amount equal to Security and Passenger Facilitation Costs paid by Qantas,

by no later than 7 days after the Flight has arrived at its Destination in Australia; and

- c. an amount equal to Security and Passenger Facilitation Costs paid by Qantas in respect of which the Agency has not already made a payment under sub-item b, no later than 7 days after receipt of a Correctly Rendered Invoice in respect of this amount,

(the **Funding**).

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

Commonwealth Bank of Australia

BSB: 064 000

Account: 10438527

Name: Qantas Airways Limited

## **6. Regulatory Requirements**

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- 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);
- g. reporting the health status of passengers and crew in compliance with biosecurity requirements of the *Biosecurity Act 2015* (Cth); and
- h. any similar or equivalent Laws or regulations of foreign authorities.

## **7. Conditions Precedent**

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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;
- visa approvals for Qantas crew and support staff (if required);
- safety, security and operational risk assessment and sign off by Qantas;
- exemption for all Qantas crew from quarantine measures (in Australia and internationally);
- ground handling and other service availability in Lima;
- determination of final LOPA for onboard social distancing requirements;
- required approvals from Easter Island for use as a diversion port; and
- the provision of the following assistance for the Flights by the Department of Foreign Affairs (DFAT) or another Commonwealth agency:
  - arranging a 'muster point' in Lima, to be used for pre-flight medical screening of all Passengers on the LIM-BNE flight, which will be conducted by Qantas' provider;
  - arranging Passenger movements to the muster point and then to the airport in Lima;
  - assistance with distribution of boarding passes and bag tags to Passengers at the muster point in accordance with Qantas' directions (unless otherwise agreed by Qantas);

- other assistance to Qantas Personnel in Lima as required. For example, liaison with local authorities.

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