



11 June 2003

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Ms Amanda Dadd
Adjudication Branch
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

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| FILE No: C2003/536 |
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| MARS/PRISM: |

Dear Ms Dadd

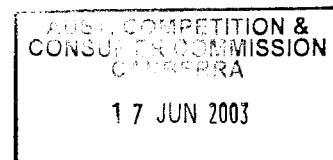
British Airways PLC and Qantas Airways Limited - Restated Joint Services Agreement

As requested, attached please find the Public Copy of the above agreement dated 3 April 2000.

We apologise for the delay in forwarding this document to you.

Yours sincerely

Sarah Collins
General Manager Legal



PUBLIC COPY

DATED 3 APRIL 2000

BRITISH AIRWAYS PLC

- and -

QANTAS AIRWAYS LIMITED

RESTATED JOINT SERVICES AGREEMENT

British Airways Plc
Legal Department
Waterside (HBA3)
PO Box 365
Harmondsworth
Middlesex
United Kingdom
UB7 0GB

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THIS AGREEMENT is made on 30 APRIL 2000

BETWEEN:

- (1) **British Airways Plc** (No 1777777) whose registered office is at Waterside, PO Box 365, Harmondsworth, Middlesex, UB7 0GB England ("BA"); and
- (2) **Qantas Airways Limited** (ACN 009 661 901) whose registered office is at Qantas Centre, 203 Coward Street, Mascot, 2020 New South Wales, Australia ("Qantas").

RECITALS:

- (A) On 20 June 1995 BA and Qantas entered into a joint services agreement (the "Original JSA") pursuant to which they agreed, inter alia, to operate certain Designated Routes (as defined herein) in co-operation with each other to establish a network of airline services over those routes.
- (B) BA and Qantas wish to enter into this agreement (the "Restated JSA") to set out, inter alia, the revised terms and conditions which will apply to their operation of the Restated JSA Routes in order to further improve their ability to offer seamless, competitive, high quality and cost effective passenger air transport and air cargo services.
- (C) The implementation of the Restated JSA will enhance the competitive position of BA and Qantas and will lead to increased competition in respect of the Restated JSA Routes.
- (D) Subject to the satisfaction of two conditions precedent, the Restated JSA will supersede and replace the provisions of the Original JSA which shall be terminated.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

- 1.1 In this agreement the following words, expressions and abbreviations shall have the following meanings, unless the context requires otherwise:

| | |
|---|--|
| Accounting Policies | the accounting policies and principles and allocation methods used by each party for the preparation of their statutory and management accounts (as amended from time to time) to account for passenger and cargo revenues in accordance with local accounting requirements; |
| Applicable Laws | all applicable laws of any jurisdiction, including any amendments thereto, as may be made from time to time, including securities laws, tax laws, tariff and trade laws, ordinances, judgements, decrees, injunctions, writs and orders or like actions of any Competent Authority and the rules, regulations, orders, interpretations, licences and permits of any Competent Authority; |
| Approvals | all orders, permits, licences, registrations, waivers, authorisations, exemptions, confirmations and approvals of any Competent Authority which are necessary or are reasonably considered by either party to be material and appropriate to be obtained in connection with this agreement and the transactions contemplated hereby; |
| BA Group | BA and its Subsidiaries; |
| Benefit | the sum of Net Passenger Benefit and Net Cargo Benefit (as such terms are defined in schedule 2); |
| Business Day | a day, other than a Saturday or Sunday, on which banks are open for business in both the City of London and Sydney; |
| Cargo Benefit Transfer Payment Model | the transfer payment model relating to Cargo Services which is set out in schedule 5 (as amended from time to time); |
| Cargo Benefit Transfer Payment | has the meaning set out in schedule 2; |
| Committee | the committee appointed by the parties to manage the Restated JSA; |

| | |
|----------------------------------|--|
| Competent Authority | any supranational, national, federal, state, county, local or municipal government body, bureau, commission, board, board of arbitration, tribunal, authority, agency, court, department, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over this agreement or either of the parties to this agreement; |
| Completion | the date upon which the Conditions have been satisfied in accordance with clause 2.1; |
| Conditions | the conditions precedent set out in clause 2.1; |
| Designated Routes | means the routes the subject of the Designated Route Services (as amended from time to time); |
| Designated Route Services | means all scheduled passenger and cargo airline services operated by either party on the sectors listed in Part A of schedule 1 (as amended from time to time); |
| Fixed Adjustments | the Revenue Spill Adjustment and the Cost Saving Adjustment (as defined in schedules 2 and 4); |
| Force Majeure | in relation to BA or Qantas, an event or circumstance which is beyond the reasonable control of (and not reasonably foreseeable or planned for by) the party liable to affect performance after the exercise of reasonable diligence which, for the avoidance of doubt, in the case of either party includes the maintenance at all times of disaster recovery plans expected of competent persons in the airline industry and shall include, but not be limited to, acts of God, war, hostilities, riot, explosion, sabotage, strike, lock-outs or other industrial disputes (except strikes, lock-outs or other industrial disputes solely in relation to its own employees, agents or sub-contractors) compliance with governmental laws, regulations or orders, provided that; |

- (i) neither lack of funds nor a default or misconduct by any third party employed or engaged as an agent or independent contractor by the party claiming Force Majeure, as the case may be, shall be interpreted as a cause beyond the reasonable control of that party unless caused by events or circumstances which are themselves Force Majeure; and
- (ii) mere shortage of materials, equipment or supplies shall not constitute Force Majeure unless caused by events or circumstances which are themselves Force Majeure;

| | |
|---|--|
| IATA | the International Air Transport Association; |
| IATA Scheduling Season | the schedule validity period as defined in the Standard Schedule Information Manual (SSIM) published twice yearly by IATA; |
| Joint Commercial Strategy Group | a committee comprising an equal number of executive managers of each of BA and Qantas established as the Co-ordination Committee under the terms of the commercial agreement between BA and Qantas dated 2 March 1993; |
| JS or Joint Services | the services and activities carried out by each of BA and Qantas under the terms of this agreement (as amended from time to time) ; |
| Passenger Benefit Transfer Payment Model | the transfer payment model relating to passenger services which is set out in schedule 3 (as amended from time to time); |
| Passenger Benefit Transfer Payment | has the meaning set out in schedule 2; |
| Qantas Group | Qantas and its Subsidiaries; |
| Quarter | a period of three calendar months ending 31 March, 30 June, 30 September and 31 December; |
| Restated JSA Routes | has the meaning set out in clause 7.1 and includes the Designated Routes; |

| | |
|---------------------------|--|
| Service Parameters | in relation to a party, means the routings, frequencies, aircraft types, product specifications, aircraft configurations, connection requirements and range of times (and preferences within those ranges) for its services; |
| Subsidiary | means subsidiary as defined in the Corporation Law of New South Wales; |
| Taxes | any income, franchise or corporate taxes and any other taxes including sales taxes, use taxes, excise taxes, gross receipts taxes, security taxes, withholding taxes, import and export taxes, transportation taxes, including all related fees, licences or assessments imposed by any national, federal, state, provincial, local, municipal, airport, port or foreign authority levied upon a party by operation of Applicable Law; |
| Transfer Payment | has the meaning given to it in clause 9; |
| US Dollars or \$ | dollars, the lawful currency of the United States of America. |

1.2 In this agreement, unless otherwise specified, reference to :

- (a) a party means a party to this agreement;
- (b) words in the singular shall include the plural and vice versa;
- (c) recitals, clauses, paragraphs or schedules are to recitals, clauses, paragraphs or schedules to this agreement. The schedules form part of the operative provisions of this agreement and references to this agreement shall, unless the context otherwise requires, include references to the recitals and the schedules;
- (d) this agreement means this agreement as amended or supplemented in accordance with its terms;
- (e) including or include shall mean including without limitation or include without limitation respectively and shall be without prejudice to the generality of any preceding words; and
- (f) any defined terms not referred to in clause 1.1, shall be a reference to such terms as defined in schedule 2.

- 1.3 The index to and headings in this agreement are for information only and are to be ignored in construing the same.

2. CONDITIONS PRECEDENT

- 2.1 The provisions of this agreement (save for this clause 2, clauses 21.22 - 21.24 (confidentiality) and clause 21.25 (governing law and jurisdiction)) are conditional upon the following:

(a) receipt of an authorisation from the Australian Competition and Consumer Commission on terms satisfactory to both parties; and

(b) receipt of binding private rulings from the Australian Taxation Office in favour of BA and Qantas on terms satisfactory to both parties.

- 2.2 BA and Qantas each undertake to use reasonable endeavours to procure the fulfilment of the Conditions as soon as possible after the date hereof.

- 2.3 If both of the Conditions have not been fulfilled on or before 30 June 2000 (or such later date as the parties may agree), the provisions of this agreement shall have no effect with effect from that date and neither party shall have any liability under them, save that the rights and liabilities of the parties in respect of any antecedent breaches of this agreement shall continue to subsist.

3. TERM

Subject to clause 2, this agreement shall continue until it is terminated in accordance with the provisions of clause 18.

4. TERMINATION OF ORIGINAL JSA

- 4.1 Subject to clause 2, the parties agree that this agreement shall supersede and replace the provisions of the Original JSA with immediate effect and the parties agree that they will have no further rights or liabilities in respect of such provisions save in connection with any antecedent breaches, which rights or liabilities shall continue to subsist.

5. CONSUMER BENEFITS

- 5.1 The parties acknowledge and agree that as a direct result of the implementation of the Original JSA they have been able to deliver a number of significant consumer benefits which include:

(a) improved schedules, stop-over choices, frequencies and better connection times on the Designated Route Services, and services connecting to the Designated Route Services, specifically, the replacement and/or increased frequencies of two-stop London gateways to continental Europe with one-stop services;

- (b) the development of new fare products and promotions, offering a high quality, competitive product for consumers as a result of the cost savings and synergies arising from the JSA;
- (c) better airport facilities such as reciprocal airport lounge access, joint lounges in certain airports, improved facilities within lounges (especially at Asia points) and streamlined check-in facilities;
- (d) ease of airport transfers for connecting passengers, particularly as a result of the location of both parties in Terminal 4 at London Heathrow;
- (e) superior services, systems and in-flight product as a result of the availability and cross-licensing of intellectual property and technology;
- (f) greater opportunities for frequent flyers who are members of one party's frequent flyer program to earn and/or redeem frequent flyer points when travelling on the other party;
- (g) the increased international competitiveness of both the parties;
- (h) increased availability through improved yield management for both passengers and cargo by and between the parties;
- (i) easier planning of itineraries through the provision of better information to agents;
- (j) improved holiday products; and
- (k) improved opportunities for joint information technology development and procurement.

5.2 The parties agree that their objectives in entering into this agreement are to continue to maximise consumer benefits and to operate cost effective and efficient networks.

5.3 In order to fulfil the objectives set out in clause 5.2, the parties will use their best endeavours to:

- (a) continue to provide the existing consumer benefits set out in clause 5.1;
- (b) provide further consumer benefits by ensuring that the Restated JSA Routes are operated in such a manner as will:
 - (i) enhance customer service and choice in order to offer a seamless and competitive service, including with respect to departure times, routings, fare and tariff types, fare availability and gateway choice;

- (ii) increase Australian, European and intermediate points for inbound and outbound passenger and cargo flows; and
 - (iii) improve the competitive position of each party and give rise to increased competition on the Restated JSA Routes;
- (c) deliver significant operational efficiencies and improve further the cost effectiveness and efficiency of the operation of the Restated JSA Routes and all functions supporting the operation of those routes through increased efficiency in the use of aircraft, joint offices, joint lounges and other resources of the parties;
- (d) pursue additional opportunities where the parties can develop new services and products which, on a basis which is equitable for both parties, will enhance the consumer benefits and the effectiveness of the Restated JSA Routes;
- (e) pursue other aspects of the operations of the Restated JSA Routes where specific activities and functions can be co-ordinated and carried out in such a manner that one party performs such activities and functions for the other (wholly or in part), including areas where wider benefits can be derived from economies of scale and the combination of activities and functions;
- (f) encourage and facilitate the movement of passengers on Restated JSA Routes and between those routes and other airline services provided by the parties elsewhere;
- (g) promote a consistently high common culture of service standards and levels of customer service on the Restated JSA Routes including in relation to:
 - (i) on board products;
 - (ii) the handling of passengers and their baggage at all stages from the booking of tickets, checking in at the airport and transfer from one flight to another until disembarkation and retrieval of baggage;
 - (iii) the handling of cargo;
 - (iv) all other related services, including frequent flyer offerings, holiday packages, and marketing and distribution arrangements; and
 - (v) joint offices at various points of the parties' networks; and

- (h) second staff to each other in order for the parties to benefit from each other's expertise and experience and in order to provide opportunities for each other's staff to further develop their own expertise and to contribute to a common service standard.

6. OPERATION OF THE RESTATED JSA ROUTES

- 6.1 In entering into this agreement each of BA and Qantas reiterate that their long term interests lie in the future development of BA and Qantas in order to ensure the seamless, competitive, high quality and cost efficient passenger and cargo services which each party provides.
- 6.2 BA and Qantas will ensure that the Restated JSA Routes are operated in such a way that will ensure that the consumer benefits and objectives set out in clause 5 and clause 6.1 are delivered. For the avoidance of doubt, the parties shall be entitled to codeshare on such of the other's Restated JSA Routes as may be agreed from time to time.

7. CO-ORDINATION OF ACTIVITIES

- 7.1 In order to deliver the consumer benefits set out in clause 5, the parties may co-ordinate their Service Parameters and may also co-ordinate their activities in the following areas:

- (a) scheduling;
- (b) marketing;
- (c) sales;
- (d) cargo;
- (e) pricing;
- (f) holiday products;
- (g) distribution and agency arrangements;
- (h) frequent flyer programmes;
- (i) in flight products;
- (j) information technology;
- (k) purchasing; and
- (l) associated service activities;

to the extent that such Service Parameters and activities relate wholly or partly to services between Australia and Europe (via any intermediate point), Australia and intermediate points to Europe, and Europe and intermediate points to Australia or such other routes as the parties may agree from time to time (together the "Restated JSA Routes").

- 7.2 The parties' co-ordination of their marketing, sales, pricing and associated activities in accordance with clause 7.1 may include the following:
 - (a) agreeing fares and new fare products;
 - (b) agreeing customer rebates, incentives and discounts;

- (c) operating co-branded joint offices, joint retail sales outlets and joint call centres in agreed locations;
- (d) co-locating certain facilities and staff in agreed locations;
- (e) appointing common general sales agents in agreed locations;
- (f) conducting joint promotions, as agreed;
- (g) co-ordinating frequent flyer activities and offerings; and
- (h) co-ordinating agency commissions, rebates, incentives and discounts.

7.3 The parties' co-ordination of their purchasing of goods or services in accordance with clause 7.1 may include negotiating with suppliers on behalf of each other in order to implement the most efficient purchasing practices and obtain the best available rates for such goods and services including in the following areas:

- (a) information technology;
- (b) in-flight services;
- (c) fleet acquisitions; and
- (d) engineering and maintenance.

8. COMMITTEE

8.1 The parties agree that the active operation of the Committee is critical to the equitable and efficient operation of this agreement.

8.2 The functions of the Committee, its initial membership and the way in which it is to be operated are set out in schedule 8 (as amended from time to time).

9. CALCULATION OF TRANSFER PAYMENTS

In relation to each calendar month of this agreement, each party shall be entitled to receive from, or liable to pay the other, as the case may be, a Passenger Benefit Transfer Payment calculated in accordance with the method set out in schedule 4 and a Cargo Benefit Transfer Payment calculated in accordance with the method set out in schedule 6. A Passenger Benefit Transfer Payment and Cargo Benefit Transfer Payment shall each be a "Transfer Payment" which shall be settled independently each Quarter in accordance with the provisions of schedule 11. (Schedules 3 and 5 provide, for illustrative purposes only, non-binding examples of the calculation of a Passenger Benefit Transfer Payment and Cargo Benefit Transfer Payment respectively).

10. ACCOUNTANTS' REVIEW

10.1 Every six months (unless otherwise agreed) each party will instruct its external accountants to review all matters necessary to provide an auditors' certificate in the form set out in schedule 7 and, following such review, to provide such a certificate.

- 10.2 Each party will instruct its accountants to:
- (a) conduct and complete the review referred to in clause 10.1 as soon as possible and, in any event, not later than three months after the end of each six month period of this agreement (“the reporting period”); and
 - (b) provide an auditor’s certificate to the other party (in the form set out in schedule 7) by the close of business on the last Business Day of the reporting period.
- 10.3 Within 30 Business Days of receipt by either party of an auditor’s certificate in accordance with clause 10.2, the receiving party shall be entitled to request full access to the working papers relating to the performance by the other party’s accountants of the procedures set out in schedule 7 and the party receiving such a request shall use its best endeavours to procure prompt access to such papers.
- 10.4 If a party considers that the work performed by the other party’s accountants either:
- (a) contains a manifest error or omission; and/or
 - (b) was not a sufficient and proper basis to form the opinion given by the accountants in their auditor’s certificate;
- it shall promptly notify the other party in writing of such fact and explain the reasons for its belief.
- 10.5 If either party makes a notification in accordance with clause 10.4, the Committee will meet as soon as practicable (or as otherwise agreed) to do the following:
- (a) to discuss the issues identified in such notification; and
 - (b) to endeavour to reach agreement on any adjustments which are required to be made to the Transfer Payment (if any) to remedy such issues.
- 10.6 In the event that the Committee resolves that an adjustment to a Transfer Payment is required, the parties shall be liable to pay, or entitled to receive (as the case may be) an amount equal to the Transfer Payment, as adjusted. If a Transfer Payment which is subject to an adjustment has already been paid, the party in whose favour the adjustment is made shall be entitled to require the other party to pay it the value of such adjustment within 30 days of the date on which the Committee agreed the value of the adjustment.

10.7 If the Committee is unable to resolve any issues or to reach agreement on adjustments within 30 Business Days after a notification has been made in accordance with clause 10.4, either party shall be entitled to refer the matter for resolution in accordance with clause 20.

10.8 Any costs associated with the production of an auditor's certificate shall be borne by the party which instructed the relevant auditor and any review of working papers requested in accordance with clause 10.4 shall be at the expense of the party requesting the review.

11. SUSPENSION OF TRANSFER PAYMENT

11.1 In addition to each party's right to challenge the calculation of a Transfer Payment in accordance with clause 10 (and without prejudice to any other rights either party may have under this agreement), each party shall be entitled to seek a review of the amount of any Transfer Payment on the grounds that it is not equitable or legitimate. An accounting error or miscalculation (or other administrative act or omission) shall not be considered inequitable or illegitimate and shall be dealt with in accordance with clauses 10 and/or 20.

11.2 If a party (the "Requesting Party") wishes to exercise its right under clause 11.1, it shall provide the other party (the "Non-requesting Party") with a written notice containing, inter alia, the information set out in clause 11.6 within 30 Business Days following the due date for payment of the contested Transfer Payment.

11.3 Upon receipt by the Non-requesting Party of a notification made in accordance with clause 11.2, either party's obligation to make the relevant Transfer Payment (if any) and any Transfer Payments in relation to subsequent Quarters which are affected by the same matters alleged to cause inequity or illegitimacy (the "Suspended Transfer Payment(s)") shall, subject to clause 11.5, be immediately suspended (the "Suspension").

11.4 Confidentiality Claimed

11.5 The Requesting Party shall have the burden of substantiating to the Committee that the Suspended Transfer Payment(s) is not equitable and/or legitimate and in demonstrating this position the Requesting Party is likely to have to prove the following (to the extent reasonably practicable):

- (a) during the period to which the Suspended Transfer Payment(s) relates (and disregarding the Fixed Adjustments) it has not benefited from an increase in Net Passenger Benefit or Net Cargo Benefit (as

appropriate) as a result of this agreement that is greater than the amount of the Suspended Transfer Payment(s); and/or

- (b) the specific costs of supporting the Joint Services (including, without limitation, product investment and marketing expenditure) are not being borne by the parties in proportion to the benefit they derive under this agreement.

11.6 In order to establish the matters set out in clause 11.5, the Requesting Party shall present a written case to the Committee which shall include the following:

- (a) a detailed assessment and quantification of the value of the perceived inequality;
- (b) an analysis of the reasons as to why the situation in (a) has occurred; and
- (c) an explanation as to why the result is inequitable or illegitimate.

The case must be made by reference to the revenue forecast information (and the assumptions underlying such forecasts) provided by the parties in accordance with schedules 9 and 10 and agreed and documented by the Committee in accordance with its functions set out in schedule 8.

11.7 If the Requesting Party is able to establish to the Committee's reasonable satisfaction the matters set out in clause 11.5, the Committee shall make whatever adjustment is required to the Passenger Benefit Transfer Model or Cargo Benefit Transfer Model (as appropriate) to resolve such deemed inequality or illegitimacy (save that no adjustment shall be made to the Fixed Adjustments under this clause 11). The Suspended Transfer Payment(s) shall then be recalculated in accordance with clause 9 and payment made in the normal way in accordance with clause 12.

11.8 If the Requesting Party is not able to establish to the Committee's reasonable satisfaction the matters set out in clause 11.5 or, having done so, the Committee is unable to agree upon the nature of the consequent adjustments to the Passenger Benefit Transfer Payment Model or Cargo Benefit Transfer Payment Model (as appropriate), within 6 months of the date of a notification made in accordance with clause 11.2, then the Suspension shall be ended with effect from the end of such period and the Suspended Transfer Payment(s) shall be made as originally calculated in accordance with clause 9. If the Committee determines that an adjustment is not warranted, it shall explain to the parties the reasons for that decision in writing.

11.9 In making any payments under clauses 11.7 or 11.8, credit shall be given for the amount of any Fixed Adjustments paid in accordance with clause 11.4.

11.10 No interest shall be payable on the amount of any Suspended Transfer Payment in relation to the period from the date of a notification made in accordance with clause 11.2 until the date which is the sooner to occur of:

(a) if the Committee has resolved to adjust the Passenger Benefit Transfer Payment Model or Cargo Benefit Transfer Payment Model (as appropriate) in accordance with clause 11.7, the due date for payment of the recalculated Transfer Payment, determined in accordance with clause 12; or

(b) the date falling six months after the date of such notification.

12. PAYMENT/INTEREST

12.1 In the event that the amount of a Transfer Payment (or other amount) has been agreed or resolved pursuant to the terms of this agreement, the party to whom the Transfer Payment (or other amount) is payable shall promptly send an invoice to the other party demanding payment of the amount due.

12.2 A party in receipt of an invoice sent in accordance with clause 12.1 shall pay the invoiced amount no later than 30 Business Days following such party's receipt of the invoice.

12.3 If a party fails to make (whether in full or in part) any payment required under this agreement on the due date for such payment then, subject to clauses 10 and 11, interest shall accrue on the unpaid amount at the rate of 1 per cent per annum above the Citibank interbank rate for US Dollars from the due date for payment up to the date of actual payment accruing on a daily basis and on the basis of a 365 day year. Interest will be capitalised and itself bear interest at intervals of one month.

12.4 **Confidentiality Claimed**

- 12.5 Subject to clause 12.6, all payments to be made by either party under this agreement shall be made gross, free of any rights of counterclaim or set off and without any deductions or withholdings of any nature save only as may be required by law.
- 12.6 If either party is required by law to make any deduction or withholding from any payment under this agreement then that party shall do so and the sum due from that party in respect of such payment shall be increased to the extent necessary to ensure that, after making such deduction or withholding, for the purposes of the payment, the other party receives and retains (free of any liability in respect of any such deduction or withholding) a net sum equal to the sum it would have received and retained had no deduction or withholding been required to be made.
- 12.7 All sums payable or taken into account in determining a sum payable under the agreement are expressed exclusive of any United Kingdom Value Added Tax ("VAT") or Australian Goods and Services Tax ("GST") however it arises. Each party must pay to the other party an amount equal to any VAT or GST for which the latter party is liable to account to HM Customs & Excise or the Australian Taxation Office (as appropriate) in relation to any supply made or deemed to be made by that party for VAT or GST purposes (against delivery by that party wherever appropriate of a tax invoice for VAT or GST purposes).
- 12.8 No amount will be payable pursuant to clause 12.7 where BA is liable to account for VAT solely on the basis of section 7 Value Added Tax Act 1983 or section 8 Value Added Tax Act 1994 ("VATA") (or an equivalent legislative provision) dealing with reverse charge on supplies received from abroad if and to the extent that input tax in respect of relevant supplies is creditable to or recoverable by BA under section 15 or section 26 VATA (or an equivalent legislative provision).
- 12.9 In the event that the New Tax System (Goods and Services Tax) Act 1999 is amended or other legislation is amended or enacted in Australia such that it deals with a reverse charge on supplies as described for the UK in clause 12.8, the same treatment will apply in relation to those charges as described for VAT in clause 12.8.
- 12.10 All sums payable or taken into account in determining a sum payable under the agreement will be exclusive of Australian and UK passenger departure tax and other relevant ticket taxes, including but not limited to Australian aircraft noise levies.

- 12.11 Each party must pay to the other (in addition to any sums otherwise payable by the first party under this agreement) an amount equal to any passenger departure tax for which the latter party is liable to account to the Australian or UK government (or other such relevant UK or Australian authority having power to levy such taxes).

13. ACCOUNTING POLICIES

- 13.1 Each party undertakes to the other that it will apply its Accounting Policies in making any calculation of a Transfer Payment in accordance with this agreement.
- 13.2 Each party will notify the other of any material changes to be made in its Accounting Policies (or in the systems used by it for recording, processing and preparing data used for the purposes of or required by this agreement) as soon as possible (and, if practicable, at least three months prior to the date the change is to be implemented) where such change may have an effect on the way in which it calculates a Transfer Payment or the result of such calculation.

14. INFORMATION EXCHANGE

- 14.1 Each party agrees to deliver to the other party and the Committee the data and other information listed, on the dates and frequency specified, in schedule 9.
- 14.2 In the event that either party becomes aware that there has been a material change in the information previously provided by it (or the other party) in accordance with clause 14.1, such party shall notify the Committee of such change within 7 Business Days of it having become aware of it.
- 14.3 Each party shall keep detailed records of all material activities carried out by it in connection with this agreement and on the reasonable request of the other party and, for the purpose only of enabling confirmation of compliance with the terms of this agreement, shall (i) provide to the requesting party the information requested, provided that such information does not include any confidential information relating to third parties or any legally privileged information and (ii) make such records available for inspection and/or provide copies to the requesting party, provided such records do not contain confidential information relating to third parties or any legally privileged information. Each party shall hold any records maintained by and in accordance with this clause 14.3 for a period of 7 years from the end of the year to which they relate.

15. CHANGE

- 15.1 For the purposes of this clause, "Voluntary Change" means, in the case of either party, any change a party wishes to make of whatever nature (including, without limitation, a change to the Designated Route Services, Service Parameters in relation to the Designated Routes or Accounting Policies) which may materially affect the commercial intentions of this agreement or the

performance by either party of its obligations under this agreement, in either case where this would be manifest in a change in the ASKs or WRFTKs flown or Net Passenger Benefit or Net Cargo Benefit received by either party. A change required by law or an event of Force Majeure shall not constitute a Voluntary Change for the purposes of this agreement.

- 15.2 Subject to clause 5 (consumer benefits) and 6 (operation of the Restated JSA Routes) and to the provisions of this clause 15, either party shall be entitled to make a Voluntary Change at any time during the term of this agreement. A party wishing to make a Voluntary Change shall be a "changing party".
- 15.3 A changing party shall notify the other party (the "non-changing party") and the Committee of such change not less than 60 Business Days before the desired date for the change PROVIDED THAT:
- (a) if such change relates to scheduling, that notification is at least two months' prior to the IATA slot conference relating to the IATA Scheduling Season in which it is proposed that the Voluntary Change is to take effect; and
 - (b) if the Voluntary Change relates to a party's product, that notification is at least three months' prior to the desired date for change.
- 15.4 In making any notification for the purposes of clause 15.3, the changing party shall provide the non-changing party and the Committee with a written business case which shall include the information set out in schedule 10 in relation to the Voluntary Change.
- 15.5 Upon receipt of a notification made under clause 15.3, the Committee shall consider the impact of such proposed change on the Joint Services and any consequential changes which are required to be made to the Passenger Benefit Transfer Payment Model and/or Cargo Benefit Transfer Payment Model (as appropriate) to ensure that there is no variation in the commercial relationship between the parties as set out in this agreement as a result of such change. In determining whether and, if so, how to make a change to the Passenger Benefit Transfer Payment Model and/or Cargo Benefit Transfer Payment Model (as appropriate) under this clause 15.5, the Committee shall have regard to (and shall implement) the guidelines set out in schedule 10. The Committee shall not be entitled to change the amount of the Fixed Adjustments.
- 15.6 If the Committee determines that a change to the Passenger Benefit Transfer Payment Model and/or Cargo Benefit Transfer Payment Model (as appropriate) is required as a result of a Voluntary Change it shall notify the parties in writing of such change, its duration (if not unlimited) and the date upon which the change shall take effect and the Passenger Benefit Transfer Payment Model and/or Cargo Benefit Transfer Payment Model (as appropriate) shall be amended to include such change with effect from such date.

15.7 If the Committee is unable to determine what change to the Passenger Benefit Transfer Payment Model and/or Cargo Benefit Transfer Payment Model (as appropriate) is required as a result of a Voluntary Change within 20 Business Days of its receipt of a notification made in accordance with clause 15.3, either party shall be entitled to refer the issue to dispute resolution in accordance with clause 20.

15.8 In the event that the parties are unable to resolve any matter referred to dispute resolution in accordance with clause 15.7 and the non-changing party is able to establish that the Voluntary Change has, or would have, a materially adverse effect on the equitability or legitimacy of the Passenger Benefit Transfer Payment Model and/or Cargo Benefit Transfer Payment Model (as appropriate), then, without prejudice to any other rights it may have, the non-changing party shall be entitled to terminate this agreement on 12 months' notice by serving written notice on the changing party to that effect.

For the avoidance of doubt the provisions of clause 19 (Consequences of Termination) shall apply to termination pursuant to this clause 16.

16. Confidentiality Claimed

17. YIELD DIVERGENCE

17.1 The parties recognise that, if the commercial objectives in clause 6.1 are achieved as intended, then each party's relative yields should not diverge materially from their respective levels as at 1 November 1998 and that the relative yields may converge as the parties harmonise commercial practices and the components of the customer experience. As a result, the parties expect their relative yields to remain constant or possibly to converge.

17.2 The parties agree that, in the event that each party's relative yields (as stated in their respective home currencies) diverge materially for a sustained period against their respective levels as at 1 November 1998, the superior yielding

party shall be entitled to request that an adjustment be made to either the Passenger Benefit Transfer Payment Model and/or the Cargo Benefit Transfer Payment Model (as appropriate) to compensate for any deemed inequity arising from such yield divergence.

- 17.3 In order to exercise its right under clause 17.2 a party shall notify the other party in writing of its request and shall provide the Committee with the information set out in schedule 10.
- 17.4. As soon as reasonably practicable following receipt of a notification in accordance with clause 17.3, the Committee shall meet to discuss and consider the case presented by the party making the notification.
- 17.5 If the Committee considers that one party has failed to perform its obligations under this agreement (in whole or part) and that this has caused yield divergence then the Committee will make an adjustment to either the Passenger Benefit Transfer Payment Model and/or the Cargo Transfer Payment Model (as appropriate) to compensate for any deemed inequity associated with such divergence.
- 17.6 Any adjustment for yield divergence made in accordance with clause 17.5 will be either or both of: (i) an increase or premium in the relevant party's Base Revenue to reflect the higher relative yields being sustained; and/or (ii) an agreed payment, either fixed or formulaic, to the party with superior yields to compensate for its commercial costs (such as, without limitation, sales or product investment) applicable to the relevant Designated Routes showing the yield over-performance.
- 17.7 The parties' rights under this clause 17 are in addition and without prejudice to any rights they may have to seek a Suspension in accordance with clause 11 and vice versa.

18. TERMINATION

- 18.1 Either party may terminate this agreement with effect from the start of an IATA Scheduling Season by giving to the other at least 12 months' prior written notice of such termination.
- 18.2 The party (which is not the other party referred to below) or either party in relation to clause 18.2(c) may, without prejudice to any of its other rights arising hereunder or as a result of any breach by the other party of its obligations, terminate this agreement by giving notice to the other, such termination to take effect on the date specified in the relevant notice:
- (a) if the other party shall fail to observe or perform any material term or condition of this agreement and such default or breach (if capable of remedy) shall continue unremedied sixty Business Days days after

notice in writing, specifying the breach and requiring the same to be remedied, has been given;

- (b) there shall have been any delay or failure in performance under this agreement on the part of the other party resulting from any occurrence of an event or events of Force Majeure which delay or failure shall have continued for a continuous period of 30 Business Days or during any aggregate period of 30 Business Days in any Quarter;
- (c) if any Approval is subsequently revoked or altered by any Competent Authority with respect to either party, or if any part of this agreement is, or shall become, or shall be declared illegal, invalid or unenforceable in any jurisdiction (including both by reason of the provisions of any legislation (including, without limitation, under The Competition Act 1998 (UK) or the EC Treaty or the Trade Practices Act (Australia)) and also by reason of any decision of any Competent Authority, either having jurisdiction over this agreement or having jurisdiction over either party to this agreement), with such revocation, alteration, illegality, invalidity or unenforceability having a material adverse effect on the party seeking to terminate this agreement; and
- (d) if the other party becomes or is declared insolvent, makes a general assignment for the benefit of its creditors or commits an act of bankruptcy or if a controller and administrator, receiver, trustee, or liquidator is appointed over all or substantially all of its property.

18.3 This agreement may be terminated in accordance with the provisions of clause 15.8.

19. CONSEQUENCES OF TERMINATION

19.1 Each party will use its reasonable endeavours to minimise the disruption caused to customers and to mitigate the costs incurred by the parties on termination or expiry of this agreement and in mitigating such costs each shall take into account, where it is reasonable to do so, all relevant circumstances at the time of the termination or expiry (as applicable) of which it is aware or which are notified to it by the other party.

19.2 The termination or expiry of this agreement howsoever caused shall be without prejudice to any obligations, rights or liabilities of any of the parties which have accrued prior to such termination (including, without limitation, in relation to the payment of any Transfer Payment calculated in accordance with clause 9) or expiry or claims which one party may have against the other for antecedent breach and shall not affect any provision of this agreement which is expressly or by implication provided to come into effect on or continue in effect after such termination or expiry.

20. DISPUTE RESOLUTION

- 20.1 The parties shall negotiate in good faith with a view to resolving any question or difference (including, without limitation, any question or difference involving the Committee) which may arise concerning the construction, meaning or effect of this agreement and any dispute arising out of or in connection with this agreement provided that the parties shall not be obliged to comply with the provisions of this clause 20 in relation to a dispute or matter which would entitle a party to proceed for equitable relief.
- 20.2 If the matter in dispute cannot be resolved amicably, either party may serve notice on the other that it wishes such matter to be referred to the Joint Commercial Strategy Group to review jointly the matter in dispute and to resolve the matter within a further 30 Business Days following the date of such notification.
- 20.3 If the matter in dispute cannot be resolved by the Joint Commercial Strategy Group within such further 30 Business Days, then the dispute shall be referred to the Chief Executives of BA and Qantas for resolution.
- 20.4 If the Chief Executives of BA and Qantas are unable to resolve a dispute within 40 Business Days of its being referred to them, the dispute resolution process shall be deemed exhausted and (if appropriate) either party shall then be entitled to initiate legal proceedings in respect of the matter which is the subject of the dispute.
- 20.5 In the event that the resolution of a dispute by the Chief Executive of BA or Qantas in accordance with clause 20.3 would create a conflict of interest because such individual is on the board of directors of the other party, then the Chief Executive who has the conflict of interest shall be entitled to nominate another member of the board of BA or Qantas (as appropriate and provided that the identity of such appointee is acceptable to the other party) who does not have such a conflict to stand in his place for the purposes of clause 20.3.

21. GENERAL

Waiver

- 21.1 Except where otherwise expressed in this agreement, no failure of either party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this agreement (each a "Right") will operate as a waiver thereof, nor will any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of this agreement shall not be deemed to be a waiver of any subsequent breach.

Entire Agreement

21.2 This agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this agreement and contains the whole agreement between the parties relating to the subject matter of this agreement at the date hereof. Each of the parties acknowledges that:

- (a) it does not enter into this agreement on the basis of, and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this agreement or not) except those expressly contained in this agreement; and
- (b) this clause 21.2 shall not apply to any term implied by law which may not be excluded by contract or to any statement, representation or warranty made fraudulently, or to any provision of this agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this agreement.

Variation

21.3 No variation of this agreement shall be effective unless in writing and signed by or on behalf of each of the parties.

Assignment

21.4 This agreement is personal to the parties and the rights and obligations of the parties under it may not be assigned or otherwise transferred.

Invalidity

21.5 If any provision in this agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this agreement but the legality, validity and enforceability of the remainder of this agreement shall not in any way be impaired.

Counterparts

21.6 This agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by signing any such counterpart but this agreement shall not be effective until each party has executed at least one counterpart of this agreement.