

Funding Agreement *(one-off arrangement)*

Air Services between Sydney (Kingsford-Smith) and Lord Howe Island

Dated

Parties

Transport for NSW on behalf of the State of New South Wales

Qantas Airways Limited trading as QantasLink
ABN 16 009 661 901

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Funding Agreement *Air Services between Sydney (Kingsford-Smith) and Lord Howe Island*

Parties

Transport for NSW, a corporation constituted under the Transport Administration Act 1988 (NSW), on behalf of the **State of New South Wales** of 18 Lee Street, Sydney, New South Wales
(**TfNSW**)

Qantas Airways Limited ABN 16 009 661 901 trading as QantasLink of 10 Bourke Road, Mascot, New South Wales
(**QantasLink**)

Background

- A. (**Regulated routes**) TfNSW regulates all intrastate air routes and licenses low volume routes in accordance with the *Air Transport Act 1964*
- B. (**QantasLink licensed for Lord Howe Island route**) QantasLink is currently licensed, and intends to apply for a further licence, to provide services between Sydney (Kingsford- Smith) Airport and Lord Howe Island (this is the **Regulated Route**)
- C. (**Funding arrangement**) TfNSW has offered to provide funding to QantasLink on the terms set out in this Agreement (**Agreement**)

General Terms

1. Term (4 year arrangement)

This Agreement commences on the date it is last signed by the parties and continues for the period to 1 April 2022, unless terminated earlier in accordance with this Agreement (**Term**).

2. Delivery of the Services

2.1. Licence to connect Sydney and Lord Howe Island

- (a) (**QantasLink to hold licence**) During the Licence Period (*defined below in subclause (b)*), QantasLink will be granted by TfNSW, and hold, an air transport licence to connect Sydney (Kingsford-Smith) Airport (SYD) with Lord Howe Island (LDH) (this is the **LDH Licence**).
- (b) (**Meaning of Licence Period**) The **Licence Period** means the period from 30 March 2018 until and including 29 March 2022.

2.2. Using the Fleet

- (a) (**Use of Fleet**) QantasLink must deliver airline services connecting Sydney (Kingsford-Smith) Airport with Lord Howe Island using the Fleet (*defined below*

*in subclause (c)), in accordance with this Agreement and as required by Applicable Law. (These are the **Services**.)*

(b) **(Use of Fleet for other services and routes)** QantasLink may (if it wishes) use the Fleet for other services / routes (such as, for example, for services to Moree) provided that such use does not adversely impact the delivery of the Services in accordance with this Agreement.

(c) **(Meaning of Fleet)** The **Fleet** means QantasLink's fleet of Bombardier Dash 8 Q200 aircraft. At the date of this Agreement, the fleet comprises 3 aircraft.

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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[REDACTED]

2.9. QantasLink to consult the Board

During the Licence Period, QantasLink will consult and negotiate in good faith with the Lord Howe Island Board regarding any changes which may impact customers positively or negatively. Consultation will occur in a manner the same or similar as such consultation has been undertaken before the date of this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

3.3. Timing for payment of the Funding

A Complying Tax Invoice will be paid within 30 days of receipt of that tax invoice.

3.4. Use of Funds

QantasLink must use the Funds for the sole purpose of supporting the Services in accordance with this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

3.6. GST

- (a) **(GST Act)** A reference to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) **(GST Act)** is as defined or used in that Act.
- (b) **(Amounts are excl GST)** Any amount relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) **(If GST applies)** If GST is imposed on a supply, the consideration provided for that supply is increased by the rate at which that GST is imposed. It is payable at the same time as the consideration to which it relates.
- (d) **(Input tax credits)** If one of the parties is entitled to be reimbursed for an expense or outgoing, the amount of the reimbursement will be net of any Input Tax Credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

3.7. No deduction or withholding

The Funds, including each Monthly Instalment thereof, must be paid to QantasLink without any deduction or withholding for or on account of any tax, **(Tax Deduction)** unless such Tax Deduction is required by law, in which case TfNSW shall ensure that it grosses up for such additional amounts so that at all times QantasLink receives an amount equal to the full amounts of each Monthly Instalment.

■ [REDACTED]

4.1. Reporting

QantasLink will, within 30 days of the end of each semi-annual period during the Term ending on each 30 September and 31 March, provide to TfNSW a written report **(Bi-annual Report)** containing monthly data for the relevant period in relation to the following:

- (a) number of flights operated;
- (b) number of flight cancellations and the reasons for any flight cancellations;
- (c) seat factors (which means the unit of measurement expressed as a percentage (%) – total number of passengers against the seats operated for the relevant period); and
- (d) any other matter as agreed by TfNSW and QantasLink.

4.4. Records

QantasLink shall create and keep any records relating to this Agreement and the Services, which may include financial and service records to evidence QantasLink's performance of and compliance with this Agreement, in accordance with its existing record keeping practices as required by Applicable Law.

5. Information Management and Confidentiality

5.1. Disclosure (GIPA)

QantasLink acknowledges that TfNSW may be required to disclose this Agreement and certain information about this Agreement in accordance with its obligations under *the Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). This includes making certain information about this Agreement (and a copy of this Agreement) publicly available.

5.2. Publicity

QantasLink may not make press or other announcements or releases relating to this Agreement and the transactions the subject of this Agreement without the prior written approval of TfNSW as to the form, content and manner of the announcement or release unless and to the extent that the announcement or release is required to be made by QantasLink by Applicable Law, in which case QantasLink must use reasonable endeavours to obtain the prior approval of TfNSW.

5.3. Confidentiality

- (a) Unless otherwise specified in this Agreement or as required by Applicable Laws, a party (**Receiving Party**) undertakes to keep confidential the Confidential Information of the other party (**Disclosing Party**) and shall not disclose any Confidential Information to any third party, or cause it to be disclosed, without the prior written consent of the Disclosing Party (with the exception of the Receiving Party's professional advisors on a need to know basis only or as required by law or an applicable stock exchange and if disclosure is permitted pursuant to this clause, the Receiving Party must ensure that any person to whom it discloses the Confidential Information complies with the terms of this clause).
- (b) The parties must use the Confidential Information solely for the purpose of this Agreement. A Receiving Party must not use or exploit the Confidential Information of the Disclosing Party for its own benefit or any other purpose, or allow any other person to do so without the prior written consent of the Disclosing Party.
- (c) This Agreement does not give the Receiving Party or any person to whom a Disclosing Party discloses the Confidential Information any right, title or interest in the Confidential Information.
- (d) The Receiving Party must take all reasonable steps to protect the Confidential Information of the Disclosing Party and keep it secure from unauthorised persons.
- (e) A Receiving Party must inform the other party as soon as practicable if the Receiving Party:
 - (i) becomes aware or suspects that there has been a breach of any obligations under the Agreement and must provide all reasonable

9.2. Illegality

If

- (a) a law or a directive of any Government Agency not in effect at the date of this Agreement; or
- (b) an amendment after the date of this Agreement to, or a change after the date of this Agreement in the interpretation or application of, a law or a directive of a Government Agency,

makes or will make it illegal in any jurisdiction for QantasLink or TfNSW to provide or continue its participation in this Agreement, that affected party (**Affected Party**) shall use its best endeavours, and whether by restructuring the nature of its participation in this Agreement or otherwise, to avoid the illegality. If the illegality cannot be avoided, that Affected Party may give notice (an **Illegality Notice**) to the other party that this has happened or that it will happen.

10. Agreement Administration

10.1. Notices

- (a) (**Notice must be in writing**) A notice or other communication related to contractual issues under this Agreement (**Notice**) has no legal effect unless it is in writing and is sent to the addresses below:

Name: Mr David Spiteri or any other person holding the office of Executive Director Address: 18 Lee Street, Sydney, NSW Email: david.spiteri@transport.nsw.gov.au	Name: Mr Elton Passini Address: 10 Bourke Road, Wing C, Level 1, Mascot NSW 2020 Mobile: 0417 815 193 Email: eltonpassini@qantas.com.au
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- (b) (**Rules for giving a notice**) A Notice may be:
 - (i) (**post**) sent by prepaid post to the address for service of the addressee;
 - (ii) (**email**) sent by email to the email address of the addressee; or
 - (iii) (**delivery to an address**) delivered at the address for service of the addressee.
- (c) (**When a notice is received**) If a Notice is provided under clause 10.1(b), it must be treated as received by the party to which it is addressed:
 - (i) (**post**) if sent by post, on the 2nd Business Day after posting
 - (ii) (**email**) if sent by email, when sent by the sender unless the sender receives a delivery failure notification; or
 - (iii) (**delivery to an address**) if delivered by hand, when delivered to the nominated address.

11. General

11.1. Maintain good name and reputation

QantasLink must, and must ensure that its Personnel will:

- (a) maintain TfNSW's good name and reputation;
- (b) take no action which prejudices that good name and reputation; and
- (c) not do, say or cause anything to be done which may denigrate TfNSW, or by QantasLink's association with or provision of the Services bring TfNSW into disrepute.

11.2. Conflicts of Interest

- (a) **(No conflict)** QantasLink will ensure that, to the best of its knowledge, no conflict of interest of QantasLink, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under this Agreement.
- (b) **(What to do if a conflict arises)** QantasLink must:
 - (i) **(notify TfNSW immediately)** notify, and consult with, TfNSW immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (ii) **(comply with directions)** comply with any direction given by TfNSW in relation to those circumstances designed to manage that conflict.
- (c) **(Meaning of a conflict of interest)** For the purposes of this clause, a "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by QantasLink of, or to restrict QantasLink in performing, its obligations under this Agreement.

11.3. Costs

Each party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of this Agreement. TfNSW will not under any circumstances be liable for any costs incurred by QantasLink:

- (a) in preparation of or in anticipation of offering or providing any Services under this Agreement; or
- (b) to fulfil its obligations according to this Agreement, including to comply with any warranties, maintain records, develop and perform reporting and attend meetings (unless otherwise agreed herein).

QantasLink incurs those costs at its own expense and business risk.

[REDACTED]

[REDACTED]

11.5. Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this Agreement.

11.6. Relationships

This Agreement does not create a relationship of partnership, employment, principal and agent, or trustee and beneficiary.

11.7. Taxes, duties and government charges

QantasLink is liable for all taxes, duties and government charges imposed or levied in connection with the performance of this Agreement, except as otherwise specified in this Agreement.

11.8. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

11.9. Entire Understanding

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement. It supersedes any prior agreement or understanding between the parties on anything connected with that subject matter.

11.10. Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Agreement.

11.11. Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

11.12. Waivers and consents

Except as expressly stated in this Agreement, each party acknowledges that:

- (a) a waiver or consent under this Agreement is not effective unless it is in writing and signed by the parties entitled to give the waiver or consent;
- (b) a waiver or consent may be given conditionally or unconditionally or withheld at the absolute discretion of the party entitled to give the waiver or consent;
- (c) a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
- (d) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (e) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

11.13. Assignment

QantasLink must not assign all or any of its rights or obligations under this Agreement without the prior consent of TfNSW, except that QantasLink may, acting in good faith, assign its rights to any member of the Qantas group without consent but with notice to TfNSW.

11.14. Survival

The following clauses will survive the termination or expiry of this Agreement:

Clause	Clause title and description
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
10.1	Notices
11	General (Clauses 11.2 (Conflicts of Interest) do not survive.)
12	Definitions and interpretation
13	Governing law and jurisdiction

12. Definitions and interpretation

12.1. Definitions

Except where the contrary intention is clear, these words have the following meaning:

Applicable Law means any statute, rule, regulation, order, subordinate legislation or other direction enforceable under any statute, rule, regulation, order or subordinate legislation and in each case, which is binding on any aircraft in the Fleet, or its use or operation, or on QantasLink.

Authorisation includes any accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Government Agency.

Business Day means a day that is not a Saturday, Sunday or any other day which is a gazetted public holiday in NSW

Confidential Information means any information obtained by a party from the other party in the course of, or related to, this Agreement that is confidential by its nature or by the circumstances in which it is disclosed, including but not limited to any information reproduced in a Bi-annual Report and the terms of the Agreement itself (and any pre-contractual documents), but does not include information which:

- (a) is in or becomes part of the public domain (except information that is or becomes so because it has been disclosed in breach of the Agreement);
- (b) is lawfully known to it before the date of the Agreement; or
- (c) is or becomes available to it from another person who is in possession of it lawfully and can disclose it to the party on a non-confidential basis.

Fleet has the meaning given by clause 2.2(c).

Government Agency means any government or governmental, semi-governmental, administrative, statutory, municipal, fiscal or judicial body, department, commission, authority, tribunal, person, agency or entity.

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

LDH Licence has the meaning given at clause 2.1.

Licence Period has the meaning given at clause 2.1.

Loss means any loss, damage, liability, action, suit, claim, demand, charge, cost or expense of any kind.

Personnel of a person or entity includes its employee, agent, officer, or contractor. A reference to QantasLink's Personnel does not include TfNSW. A reference to TfNSW's Personnel does not include QantasLink.

Term has the meaning given at clause 1.

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



12.2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) **(meaning of certain references)** a reference to:
 - (i) the singular includes the plural, the plural includes the singular;
 - (ii) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement;
 - (iii) a document includes any variation or replacement of it;
 - (iv) a Law includes a Law made or issued under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (v) a person includes a partnership, body corporate, unincorporated association or an authority;
 - (vi) a party includes the party's executors, administrators, successors and permitted assigns;
 - (vii) any Governmental Agency includes the successors of it;
 - (viii) a liability (including a Loss) includes any obligation whether present or future or actual or contingent or as a principal, surety or otherwise;
 - (ix) Related Body Corporate or a Related Entity has the meaning given in the *Corporations Act 2001*;
 - (x) **dollars, A\$ or \$** is a reference to the currency of Australia; and
 - (xi) time is a reference to Sydney time.
- (b) **(use of 'may')** the term 'may' when used in the context of any power, right, authority, discretion or remedy (express or implied) (**Power**) of TfNSW means that:
 - (i) TfNSW can exercise or not exercise that Power in its absolute and unfettered discretion;
 - (ii) TfNSW has no obligation to QantasLink or any other party in connection with the exercise or non-exercise of that Power, including in connection with its effect on QantasLink; and
 - (iii) no right, interest or expectation of any kind is created in QantasLink in respect of that Power or its exercise or otherwise;
- (c) **(exercise of a power not affect other rights)** where a Power is conferred on TfNSW under this Agreement, that Power is in addition to, and not in substitution of, any other Power conferred on TfNSW at Law or under this Agreement;

- (d) **(determining timing of acts)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (e) **(effect of non-Business Days)** if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day;
- (f) **(‘include’ is not exhaustive)** the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
- (g) **(meaning of expressions)** where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (h) **(headings not binding)** headings, clause introductions in brackets and any index are for convenience only and do not form part of this Agreement or affect its interpretation;
- (i) **(no adverse construction)** a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision.

12.3. TfNSW consents or approvals

- (a) **(discretion for consents and approvals)** If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of TfNSW or is within the discretion of TfNSW, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by TfNSW as the case may be at TfNSW’s absolute discretion.

TfNSW confirms that all relevant consents and approvals for entry into, and performance of, this Agreement have been obtained and accordingly, unless otherwise set out in this Agreement, the payment of Funds in Monthly Instalments throughout the Term is unconditional.

- (b) **(Approvals to be given in writing)** Any matter or thing which requires the approval of TfNSW under this Agreement, requires such approval in writing.

13. Governing law and jurisdiction

This Agreement will be governed by the laws of New South Wales, Australia. The parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

Signing Page

SIGNED as an agreement.

Date:

Signed by and on behalf of)
Transport for NSW on behalf of the)
State of New South Wales in the)
presence of:)
)

.....
Signature of witness

.....
Signature of delegate

.....
Name of witness

.....
Name of delegate
Position:

Signed for and on behalf of)
QANTAS AIRWAYS LIMITED)
ABN 16 009 661 901)
by its duly authorised representative)
in the presence of:)

Signature of witness

Signature of authorised representative

Name of witness (please print)

Name of authorised representative