

# Conditions of Use for Aeronautical Services and Facilities – Perth Airport

Operative Date: 1 July 2018

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## Introduction

- A PAPL is the lessee and operator of the Airport under the Airport Lease granted by the Commonwealth.
- B PAPL agrees to supply the Services and Facilities to the Airline on the terms of these Conditions of Use.
- C In consideration of the supply of the Services and Facilities, the Airline agrees to pay the Fees and Charges and to otherwise comply with its obligations under these Conditions of Use.
- D These Conditions of Use are not intended to affect any Other Agreement made between PAPL and the Airline unless otherwise specifically stated in these Conditions of Use.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions together with those in Schedule 1 apply, including in the Introduction and Schedules, unless the context requires otherwise.

**Affiliate** means other operators of regular passenger transport, charter or freight services owned or controlled by the Airline that the Airline has requested and PAPL has agreed (acting reasonably, unless the other operator has a current ASA or similar agreement with PAPL, in which case PAPL may withhold its agreement in its absolute discretion) are to be covered by these Conditions of Use.

**Air Navigation Act** means the *Air Navigation Act 1920* (Cth).

**Air Navigation Regulations** means regulations made pursuant to the Air Navigation Act.

**Airline** means any airline, aircraft operator or any other person who carries on the Permitted Use and/or uses the Services and Facilities (or any part of the Services and Facilities) at the Airport other than an airline, aircraft operator or other person who, as at the Commencement Date, has in place with PAPL a separate ASA.

**Airline's Aircraft** means any aircraft owned, leased, hired, chartered or otherwise used by the Airline to carry on the Permitted Use.

**Airline's Information** means any information provided by the Airline to PAPL in relation to these Conditions of Use and includes the Statement of Information.

**Airport** means the airport described as Perth Airport in the Airports Regulations.

**Airport Collaborative Decision Making** means the implementation of a set of operational procedures and automated processes to improve the operational efficiency of the Airport, airlines and others by reducing delays, increasing the predictability of events during the progress of a flight and optimising the utilisation of resources.

**Airport Lease** means the lease of the Airport between the Commonwealth and PAPL dated 1 July 1997 having registration number G520495.

**Airport Operating Protocol** means the detailed conditions and procedures to support the safe, secure, efficient and legally compliant operation of the Airport, as amended from time to time by PAPL in consultation with the Airlines and published on the Web Site.

**Airports Act** means the *Airports Act 1996* (Cth).

**Airports Regulations** means regulations made pursuant to the Airports Act.

**Airside Operating Licence** means a licence to provide Ground Handling Services in accordance with clause 11.2(a).

**Approval** includes any permit, licence, consent, grant, certificate, authorisation or other approval, which must be obtained from a Relevant Authority.

**ASA** means an Aeronautical Services Agreement made between PAPL and the Airline which governs the Airline's use of the Services and Facilities (or any part of them) and which expressly supersedes or states that it is to apply in place of these Conditions of Use or otherwise provides that it embodies the entire understanding and agreement between the parties with respect to the subject matter of these Conditions of Use.

**Associates** means a party's officers, employees, agents, contractors (and their sub-contractors) and invitees and, in respect of the Airline, includes its Affiliate's Associates.

**Authorised Personnel** means officers, employees, agents or subcontractors of either party, and who have been directed or undertaken orally or in writing to comply with clause 15.

**Aviation Security Act** means the *Aviation Transport Security Act 2004* (Cth).

**Aviation Security Regulations** means regulations made pursuant to the Aviation Security Act.

**Best Endeavours** means to:

- (a) devote expertise and resources where appropriate or necessary;
- (b) co-operate with the other parties and provide information and assistance to them upon request;
- (c) act in Good Faith;
- (d) respond, provide approvals and consents and take action promptly and reasonably and without unreasonably withholding or delaying a response, approval or consent; and
- (e) promptly resolve any difficulties or differences, including, if necessary, resolving any disputes in accordance with clause 17,

but does not impose any obligation on the parties to provide money or security other than as specifically required under these Conditions of Use.

**Business Day** means a day, which is not a Saturday, Sunday or public or bank holiday, in Perth.

**CASA** means the Civil Aviation Safety Authority or any other statutory authority responsible for the safety regulation of civil air operations in Australia.

**Civil Aviation Act** means the *Civil Aviation Act 1988* (Cth).

**Civil Aviation Regulations** means regulations made pursuant to the Civil Aviation Act.

**Claim** includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation or any other liability whether at Law, in equity, under statute or otherwise.

**Commencement Date** means the date specified in Item 1 of Schedule 1.

**Common Use Purpose** means the purpose of accessing the Airline's departure control system to process passengers at the Airport, from check-in to departure, by issuing boarding passes, printing bag tags and undertaking document verification.

**Common Use Services** means those elements of the Services and Facilities identified as Common Use Services in Schedule 2.

**Common Use Terminal Equipment** means those elements of the Services and Facilities identified as Common Use Terminal Equipment in Schedule 2.

**Commonwealth** means the Commonwealth of Australia.

**Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth).

**Conditions of Use** means these Conditions of Use for Aeronautical Services and Facilities – Perth Airport, and includes its Schedules.

**Confidential Information** means:

- (a) any information which may come to the knowledge of a party concerning the operations, dealings, transactions, agreements or commercial or financial arrangements or affairs of the other party;
- (b) any information which is described as Confidential Information in these Conditions of Use;
- (c) any documentation of a confidential nature belonging to the other party; and
- (d) any intellectual property of a confidential nature belonging to the other party.

**Cost** includes, subject to clause 13.2, any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid), including where appropriate all legal fees (including in-house lawyers charged at their usual rates) on a full indemnity basis or a solicitor/client basis, whichever is the greater and fees of other experts and consultants.

**Default Rate** means the general interest charge annual rate published by the Australian Tax Office in accordance with section 8AAD of the *Taxation Administration Act 1953* (Cth).

**Department** means the agency of the Commonwealth Government with responsibility for the administration of Commonwealth aviation legislation, which as at the Operative Date is the Department of Infrastructure and Regional Development.

**Domestic Passenger** means a person travelling on the Airline's Aircraft between the Airport and another airport located within Australia who is not an International Passenger, but does not include:

- (a) an Infant;
- (b) aircrew operating the Airline's Aircraft; and
- (c) aircrew travelling for the purpose of repositioning an Airline's Aircraft.

**Environmental Law** means a provision of a Law or a Law which relates to an aspect of planning, the environment, heritage, health or safety.

**Event of Default** has the meaning given to it in clause 18.2.

**Expiry Date** means the date specified in Item 2 of Schedule 1.

**Fees and Charges** means the fees and charges payable by the Airline in accordance with the Schedule of Fees and Charges for the provision of the Services and Facilities under these Conditions of Use.

**Force Majeure** means any:

- (a) accident, weather, fire, flood, act of God, act of war, insurrection, sabotage, act of terrorism, industrial disturbance, act of vandalism;
- (b) failure of electrical or telecommunications networks;
- (c) substantial damage or destruction to the Airport or the Terminal Area;
- (d) legally binding judgment, injunction, or action of a court or other Relevant Authority;
- (e) changes in legislation or regulations of any government;
- (f) emergency and unplanned repairs and maintenance that are not the result of any act, neglect or default by either party, whether under these Conditions of Use or otherwise;
- (g) failure of supply by a third party; or
- (h) other event beyond the reasonable direct or indirect control of a party,

which prevents, restricts or limits the performance of obligations by that party pursuant to these Conditions of Use and which could not have been prevented, overcome or remedied by that party acting prudently, and in the case of PAPL, a similar event affecting its Providers.

**Good Faith** means to act:

- (a) honestly;
- (b) reasonably, having regards to the terms of these Conditions of Use;
- (c) not arbitrarily or capriciously;
- (d) without intention to cause harm; and
- (e) with respect for the intent of the parties' bargain as a matter of substance, and not only form,

but any obligation to act in Good Faith under these Conditions of Use does not create and is not intended to give rise to any fiduciary relationship between the parties and does not require a party to take into account the interests of the other party.

**Ground Handling Agent** means any person or organisation, including the Airline or an Airline's Associate engaged by the Airline, or by the Airline and an Other Airline in conjunction, to provide Ground Handling Services.

**Ground Handling Services** means activities undertaken at the Airport to facilitate the Airline's operations including passenger handling and check-in, baggage handling, cargo handling, mail handling, aircraft movement control (other than provided by Airservices Australia), aircraft servicing, catering, aerobridge operation, cleaning, engineering and aircraft refuelling.

**GST** means Goods and Services Tax specified under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated legislation.

**GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hazardous Material** means any substance, gas liquid, chemical, mineral or other physical or biological matter:

- (a) that is or may become toxic, flammable or inflammable;
- (b) that is otherwise dangerous, harmful to the environment or any life form or which may cause pollution, contamination or any hazard or increase in toxicity in the environment or may leak or discharge or otherwise cause damage to any person, property or the environment; or
- (c) that is a material or compound controlled, prohibited or regulated from time to time by any Law.

**Indirect Loss** means any consequential loss, including:

- (a) loss of revenue or income;
- (b) loss of profits;
- (c) loss of business opportunity;
- (d) loss of reputation; and
- (e) loss of contracted or anticipated savings or financing costs.

**Infant** means a person of less than 2 years of age.

**Insolvency Event** means, in respect of a party, the occurrence of any of the following:

- (a) that party disposes of the whole or substantial part of its assets, operations or business other than in the ordinary course of business;
- (b) that party ceases to be able to pay its debts as they become due, which will be deemed to have occurred if that party notifies the other party in writing or creditors generally that the notifying party is insolvent;
- (c) a mortgagee takes possession or disposes of the whole or substantial part of that party's assets, operations or business;
- (d) a party entering into a scheme of arrangement or composition with its creditors (other than for the purposes of a solvent reconstruction);
- (e) a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person is appointed over the whole or part of that party's assets, operations or business; or
- (f) something having a substantially similar effect to the circumstances described in (a) to (e) (inclusive) above under the Laws of any jurisdiction.

**Installations** means the installations and all physical infrastructure to enable the supply of utilities (including the provision of data services, optic fibre services and telecommunication services) to, or within the Airport, including all pipes, conduits, cabling, wiring, fibre, pits, electronic devices, ducts, poles, meters, monitoring devices, active and passive equipment, and distribution infrastructure.

**International Passenger** means a person travelling on the Airline's Aircraft (including a Passenger travelling to or from the Airport to another place in Australia), on a flight the origin and/or ultimate destination of which is outside Australia, including Christmas and Cocos Islands, and has been processed using international terminal facilities at the Airport but does not include:

- (a) an Infant;
- (b) aircrew operating the Airline's Aircraft; and
- (c) aircrew travelling for the purpose of repositioning the Airline's Aircraft.

**Law** means any statute, regulation, order, rule, subordinate legislation, standard or other document enforceable under any statute, regulation, rule or subordinate legislation.

**MTOW** means the maximum take-off weight of an aircraft.

**Occupational Safety and Health Law** means the *Occupational Safety and Health Act 1984* (WA) and any other Law, guideline, order, notice, code of practice, standard or policy of any Relevant Authority relating to or dealing with:

- (a) occupational safety and health;
- (b) any Hazardous Material;
- (c) the use, storage or transportation of Hazardous Material;
- (d) the disposal, discharge or treatment of Hazardous Material; and
- (e) the spill, leakage, containment or remediation of Hazardous Material, and all related lawful directions and Approvals.

**Operative Date** means 1 July 2018.

**Other Agreement** means any agreement in writing, other than these Conditions of Use, between PAPL and the Airline and/or their respective Associates.

**Other Airline** means any person other than the Airline who also uses the Airport for the Permitted Use (or a use similar to the Permitted Use) and includes the Other Airline's Affiliates.

**PAPL** means Perth Airport Pty Ltd (ACN 077 153 130) and includes its successors and assigns, the lessee and operator for the time being of the Airport.

**PAPL's Information** means information provided by PAPL to the Airline in relation to these Conditions of Use.

**Passenger** means a Domestic Passenger or an International Passenger.

**Permitted Use** means the use of the Terminal Area in common with others for the purpose of:

- (a) aircraft landing, taxiing and take-off;
- (b) processing arriving or departing Passengers whose flight with the Airline commences and terminates within Australia;
- (c) processing arriving or departing Passengers whose flight with the Airline commences or terminates outside Australia;
- (d) loading or unloading freight being carried either:
  - (i) within Australia; or
  - (ii) between locations within and outside Australia; and
- (e) any of the Airline's Aircraft accessing maintenance or other aircraft servicing facilities at the Airport,

and includes code share operations and carrying Passengers on behalf of other airlines, but does not include Ground Handling Services and any retail or other activities other than the sale of tickets for the carriage of Passengers on the Airline's Aircraft, charging for excess baggage, arranging flight changes, selling Passenger protection insurance, provision of in-flight entertainment services and other retail activities approved in writing by PAPL in its discretion acting reasonably, or as otherwise permitted by any Other Agreement between the Airline and PAPL.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Project Consultative Forum** means a forum convened by PAPL in accordance with clause 7.3.

**Provider** means any provider and contractor appointed by PAPL from time to time to supply any part of the Common Use Terminal Equipment or Common Use Services.

**Recovery Charges** means the recovery charges paid by the Airline to enable recovery of PAPL's costs of providing the Services and Facilities that do not relate to the Usage Charges, as published, from time to time, on PAPL's Web Site.

**Regular Public Transport Operations** means air service operations where, for a fee, the aircraft is operated according to fixed schedules over specific routes and is available to the general public on a regular basis.

**Regulatory Controls** means each of those things referred to in clause 5.1, except these Conditions of Use.

**Relevant Authority** means PAPL (in the exercise of statutory or regulatory powers or responsibilities) and any government, municipal, statutory, public or other authority or body having authority or jurisdiction in relation to the Airport or the Airline.

**Schedule** means a schedule to these Conditions of Use.

**Schedule of Fees and Charges** means the schedule of the fees and charges applicable to the provision of the Services and Facilities under these Conditions of Use as published, from time to time, on PAPL's Web Site.

**Security Rules** means those requirements established for the time being by PAPL as being essential to the security and safety of the Airport, including in relation to:

- (a) emergency procedures;
- (b) staff security clearances;
- (c) security screening (passengers, general public, personnel and goods);
- (d) aviation security identification cards;
- (e) any other matters set out in the Aviation Security Act and the Aviation Security Regulations; and
- (f) fees reasonably set by PAPL from time to time to recover security Costs on a pass-through basis including a reasonable allocation of overheads.

**Services and Facilities** means the services and facilities identified in Schedule 2.

**State** means the State of Western Australia.

**Statement of Information** means a statement of information provided by the Airline to PAPL in accordance with clause 8.3(a).

**Term** means the term specified in Item 3 of Schedule 1, commencing on the Commencement Date and ending on the Expiry Date.

**Terminal Area** means:

- (a) the Airport terminal or terminals approved by PAPL for use by the Airline; and
- (b) the areas of the airfield at the Airport used for aircraft movement, including the runways, taxiways and aprons, but not any areas of the airfield that are, from time to time, subject to an exclusive lease or licence arrangement.

**Transfer Passenger** means an International Passenger who connects from one flight whose original destination is outside Australia then on to another flight, and the Passenger is not processed by the Australian Border Force in an international terminal operated by PAPL.

**Transit Passenger** means an International Passenger whose original port and ultimate destination, at least one of which is outside Australia, are serviced by the Airline as one continuous journey which includes a landing and take-off at the Airport and the Passenger is not processed by the Australian Border Force in an international terminal operated by PAPL.

**Usage Charges** means the usage charges payable by the Airline for the use of various Services and Facilities, as published, from time to time, on PAPL's Web Site.

**Web Site** means [www.perthairport.com.au](http://www.perthairport.com.au).

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Nothing in these Conditions of Use is to be interpreted against a party solely on the ground that the party put forward these Conditions of Use or a relevant part of it.
- (c) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (d) If the date on or by which any payment must be made under these Conditions of Use is not a Business Day, the payment must be made on or by the next Business Day.
- (e) Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- (f) Expressions which are not defined, but which have a defined meaning in the GST Law, have the same meaning.
- (g) The following rules apply unless the context requires otherwise.
  - (i) A reference to a job role is a reference to the person employed by PAPL who holds that role or a similar role.
  - (ii) The singular includes the plural, and the converse also applies.
  - (iii) A gender includes all genders.
  - (iv) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (v) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (vi) A reference to a clause, or Schedule is a reference to a clause of, or Schedule to, these Conditions of Use.
  - (vii) A reference to an Item is a reference to the relevant Item in Schedule 1.
  - (viii) A reference to an agreement or document (including a reference to these Conditions of Use) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by these Conditions of Use or that other agreement or document, and includes the recitals, and schedules and annexures to that agreement or document.
  - (ix) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (x) A reference to a party to these Conditions of Use or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - (xi) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (xii) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
  - (xiii) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.

- (xiv) A reference to *dollars* or \$ is to Australian currency.
- (xv) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (xvi) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (xvii) A reference to time is to Australian Western Standard Time.

### **1.3 Inconsistency**

In the case of an inconsistency between:

- (a) these Conditions of Use and the Airport Operating Protocol, these Conditions of Use will prevail unless otherwise specifically stated in these Conditions of Use;
- (b) these Conditions of Use and the Airports Act or the Airports Regulations, the Airports Act or the Airports Regulations will prevail;
- (c) these Conditions of Use and any Other Agreement (including an ASA), the Other Agreement will prevail unless otherwise specifically stated in these Conditions of Use or that Other Agreement; and
- (d) these Conditions of Use and a Schedule or annexure to these Conditions of Use, these Conditions of Use will prevail,

to the extent of the inconsistency.

### **1.4 Fair and reasonable terms and conditions**

The Airline and PAPL agree that the terms and conditions of these Conditions of Use are fair and reasonable and are intended to apply for the Term.

## **2 Conditions of Use**

### **2.1 Application of these Conditions of Use**

These Conditions of Use apply to any Airline carrying on the Permitted Use and/or using the Services and Facilities (or any part of the Services and Facilities) at the Airport except where, as at the Commencement Date, there is in place between the Airline and PAPL a separate ASA.

### **2.2 Notification of these Conditions of Use**

- (a) Where possible, PAPL will take reasonable steps to notify the Airline of these Conditions of Use before the Commencement Date, including by publishing a copy of these Conditions of Use on its Web Site.
- (b) If the Airline uses the Services and Facilities on or after the Commencement Date then this will constitute acceptance by the Airline of these Conditions of Use, regardless of whether:
  - (i) the Airline has signed these Conditions of Use; or
  - (ii) the Airline has been notified of these Conditions of Use.

### **2.3 Alterations to Conditions of Use**

- (a) Subject to any contrary requirement at Law, PAPL may from time to time amend or replace these Conditions of Use or any part of these Conditions of Use provided that PAPL:
  - (i) gives the Airline no less than 90 days' notice of any proposed amendment or replacement of or to these Conditions of Use (or any part of them);
  - (ii) uses reasonable endeavours to consult with the Airline (either directly or through relevant industry bodies) prior to any proposed amendment or replacement of or to these Conditions of Use (or any part of them), which consultation includes considering and responding to any comments or objections raised by the Airline;
  - (iii) as soon as reasonably practicable after consulting with the Airline under clause 2.3(a)(ii), notifies the Airline of the amendment or replacement of these Conditions of Use; and
  - (iv) on the date on which the amendment or replacement is to take effect, publishes the amended or replacement Conditions of Use on its Web Site.
- (b) Any amendment or replacement of these Conditions of Use made under clause 2.3(a) will take effect and become binding on PAPL and the Airline on the date on which PAPL publishes the revised Conditions of Use on its Web Site in accordance with clause 2.3(a)(iv).
- (c) If the Airline continues to use the Services and Facilities at the Airport after PAPL amends or replaces these Conditions of Use under this clause 2.3, then this will be taken to constitute acceptance by the Airline of the relevant amendment and/or replacement of these Conditions of Use.

### **2.4 Airline information required prior to using Services and Facilities**

- (a) Without affecting clause 8.3, before the Commencement Date, the Airline must provide to PAPL the following information (to the extent not already provided to PAPL):
  - (i) name, address and contact details for the Airline (including postal address, facsimile and email address);
  - (ii) evidence acceptable to PAPL (acting reasonably) that the Airline has in place a security program that meets PAPL's security requirements and otherwise complies with all applicable Laws;
  - (iii) evidence acceptable to PAPL (acting reasonably) that the Airline has in place emergency procedures that meet PAPL's emergency and safety requirements and otherwise complies with all applicable Laws;
  - (iv) the names, addresses, telephone numbers, facsimile numbers and all other relevant contact details of the Airline's key personnel and designated security officer to enable PAPL to contact the Airline at any time regarding emergencies or security or operational matters in connection with the Airline's use of the Services and Facilities at the Airport;
  - (v) the Airline's proposed ground handling arrangements for operating crew, passengers and cargo; and
  - (vi) details of the type, registration, configuration and MTOW of each of the Airline's Aircraft.

- (b) The Airline must promptly advise PAPL of, and provide PAPL with any information reasonably requested by PAPL in relation to, any change or changes in:
  - (i) any of the information supplied to PAPL under clause 2.4(a);
  - (ii) the owner or owners of 50% or more of the shareholding in the Airline, or a change or changes in the shareholding in or management of the Airline which may result in a change in the effective control of the Airline, whether by one or a series of transactions; or
  - (iii) any of the changes described in clauses 2.4(b)(i) to 2.4(b)(ii) which apply to any of the Airline's Affiliates.

### **3 Licence to use Services and Facilities**

#### **3.1 Grant of licence**

- (a) PAPL grants to the Airline and the Airline accepts a non-exclusive licence to use the Terminal Area in common with Other Airlines for the Permitted Use and to use:
  - (i) the Services and Facilities (excluding the Common Use Terminal Equipment and Common Use Services) for the Permitted Use; and
  - (ii) the Common Use Terminal Equipment and Common Use Services for the Common Use Purpose,in accordance with these Conditions of Use for the Term.
- (b) The grant in clause 3.1(a):
  - (i) includes the right in common with Other Airlines to access the Terminal Area and use the Services and Facilities at such times as are designated by PAPL from time to time, acting reasonably;
  - (ii) does not give the Airline any proprietary estate or interest or any exclusive possession or right of access in the Airport or the Services and Facilities or any part of those things; and
  - (iii) does not prevent PAPL from granting other parties access and rights, including the right to conduct the Permitted Use and the Common Use Purpose, at the Airport.
- (c) The Airline must not cause or allow any caveat to be lodged against any part of the titles to the Airport claiming any alleged estate or interest arising from these Conditions of Use.

#### **3.2 Term**

The licence in clause 3.1(a) commences on the Commencement Date and ends on the Expiry Date, unless terminated sooner under these Conditions of Use.

#### **3.3 Reservation of rights**

Despite clause 3.1(a), PAPL retains the right to control the use of the Airport (including the Terminal Area) as it sees fit (in its absolute discretion), including:

- (a) closing the common areas and any part of the Airport for as long as PAPL considers necessary;
- (b) to enter any part of the Airport at any time and for any reason including to inspect, vary, repair, maintain or replace any part of the equipment, facilities or Installations at the Airport;
- (c) excluding or removing any person from the Terminal Area or the Airport; and
- (d) restricting access to delivery and pick up areas.

### **3.4 Deemed commencement**

With effect on and from the Commencement Date, the Airline is bound by these Conditions of Use as if these Conditions of Use had been completed, executed and delivered. These Conditions of Use are binding on a party to it even if it is not executed by that party or any other person named as a party.

### **3.5 PAPL's official capacity**

The Airline acknowledges and agrees:

- (a) that in addition to acting in its contractual capacity under these Conditions of Use, PAPL has obligations and responsibilities under the Regulatory Controls;
- (b) that any conduct of PAPL in accordance with the Regulatory Controls is not a breach of PAPL's obligations under these Conditions of Use and is not subject to clause 17;
- (c) to comply with all lawful requirements imposed by PAPL in the exercise of its powers or obligations under the Regulatory Controls;
- (d) not to do or suffer to be done any act or neglect or omit to do any act or permit any other person to neglect or omit to do any act where the conduct, neglect or omission may obstruct PAPL from performing its responsibilities under the Regulatory Controls; and
- (e) not to make any Claim in respect of PAPL's exercise of its powers under the Regulatory Controls,

and the Airline must indemnify and keep PAPL indemnified on demand against any Claims suffered by PAPL as a result of the Airline failing to comply with this clause 3.5.

## **4 Services to be provided by PAPL**

Subject to the terms of these Conditions of Use, PAPL will use its Best Endeavours to:

- (a) supply the Services and Facilities with due care and skill and in accordance with:
  - (i) good airport management practice and any relevant Australian standards;
  - (ii) all applicable Laws; and
  - (iii) all service and performance standards or levels set out in these Conditions of Use and the Airport Operating Protocol that relate to the provision of the Services and Facilities or any part thereof; and
- (b) maintain the Airport in a clean, safe and serviceable condition sufficient to facilitate the Permitted Use.

## **5 Use of the Airport**

### **5.1 Compliance**

In its use of the Airport, the Airline must, and must ensure its Associates, obtain and keep current all necessary Approvals required to carry out the Permitted Use and comply with:

- (a) the Airports Act and the Airports Regulations;
- (b) any flying restrictions which may be in place from time to time, including the requirements of the Civil Aviation Act, the Civil Aviation Regulations, the Air Navigation Act, the Air Navigation Regulations and Airservices Australia publications including aeronautical information publications, en-route supplements and notices to airmen;
- (c) these Conditions of Use;
- (d) the Airport Operating Protocol;

- (e) CASA and Airservices Australia rules and regulations, orders, instructions, directions and notices (including those relating to air traffic control);
- (f) any demand management schemes, schedule coordination arrangements, or capacity allocation rules reasonably imposed by PAPL or by any Relevant Authority;
- (g) any requirement to obtain and observe any relevant licenses issued by PAPL including airside licences, Airside Operating Licences, airside driving licences and ASIC (Aviation Security Identification Card);
- (h) the Security Rules and directives on security of airports and aircraft issued by the Department;
- (i) all relevant Environmental Laws; and
- (j) all relevant State and Commonwealth Laws relating to employer and employee conduct including, but not limited to, the Occupational Safety and Health Law and the Laws relating to sexual harassment, discrimination and equal employment opportunity,

and in doing so must comply with all reasonable and lawful conditions, instructions, orders or directions made by PAPL under these Conditions of Use or by any Relevant Authority.

## **5.2 Restrictions**

The Airline must not, and must ensure its Associates do not:

- (a) interfere with the use and enjoyment by Other Airlines of any common areas at the Airport;
- (b) without PAPL's prior written consent, restrict, obstruct or hinder:
  - (i) any part of the common areas at the Airport;
  - (ii) access to any parts of the Airport by Other Airlines (including entrances, exits, driveways and other parts of the common areas);
  - (iii) any vehicle access to the Airport, including to any set down or pick up areas; or
  - (iv) access by PAPL to any part of the Airport;
- (c) knowingly do or omit to do anything that may cause PAPL to become liable to any Cost or penalty; and
- (d) conduct any illegal or unlawful use in the Terminal Area or elsewhere in the Airport.

## **5.3 Airline's Associates**

The Airline:

- (a) must ensure its Associates comply with the terms of these Conditions of Use as if it were the Airline, including the obligations to pay money; and
- (b) is responsible for the acts, default and negligence of its Associates.

## **5.4 Airport Lease**

The Airline acknowledges the terms of the Airport Lease and, despite any other term of these Conditions of Use, the Airline agrees that it must not do anything which would prejudice the Airport Lease or cause PAPL to be in breach of the Airport Lease.

## **6 Provision of Services and Facilities**

### **6.1 Capacity**

- (a) PAPL must provide sufficient Services and Facilities to accommodate the level of capacity at the Airport as existed on the Operative Date or as it may be increased in accordance with clause 6.1(b).
- (b) PAPL may expand capacity at the Airport as and when PAPL considers it appropriate to do so. PAPL's decisions and actions in relation to this clause 6.1(b) are not subject to clause 17.
- (c) Before expanding capacity at the Airport, PAPL must consult with the Airline and Other Airlines in accordance with clause 7.3.

### **6.2 Day to day operations**

- (a) In addition to any obligations to consult with the Airline under the Airports Act, PAPL must:
  - (i) provide reasonable notice of and consult with the Airline before making any changes to operational procedures which may affect the Airline's business operations or the Cost to the Airline of undertaking the Permitted Use;
  - (ii) manage the Airport on a day by day, case by case basis consistent with the good order and management of the Airport generally; and
  - (iii) consult with the Airline and others before making a determination in relation to any conflicting requirements for the use of the Airport.
- (b) If a dispute arises under this clause 6.2 about any determination of PAPL, the parties must comply with the determination until the dispute is resolved.

### **6.3 Promoting Airport efficiency**

- (a) PAPL and the Airline must each use Best Endeavours to work together and with Other Airlines and third parties to identify opportunities to improve efficiency of use of Airport facilities.
- (b) PAPL and the Airline will work with each other and with Other Airlines, Airservices Australia, Ground Handling Agents, Australian Border Force, the Department of Agriculture and Water Resources and other relevant parties to:
  - (i) improve information sharing to facilitate operational planning;
  - (ii) develop and agree service levels (where these are not already defined in the Airport Operating Protocol) and methods for measuring and reporting service levels; and
  - (iii) implement Airport Collaborative Decision Making at the Airport.
- (c) PAPL and the Airline will give effect to the service levels and methods for measuring and reporting service levels agreed under clause 6.3(b)(ii) by inserting them as a new Schedule 3 to these Conditions of Use.

## **7 Consultation**

### **7.1 Regular meetings**

- (a) Unless otherwise agreed, if the Airline conducts Regular Public Transport Operations at the Airport, then PAPL and the Airline (and/or any person or association representing the Airline under clause 7.1(b)) will meet at least as often as specified in Item 4 of Schedule 1 to consult in relation to:
  - (i) the Airline's use of the Airport under these Conditions of Use; and
  - (ii) without affecting clauses 6.3(b)(ii) and 6.3(c), the level and quality of Services and Facilities provided by PAPL under these Conditions of Use.
- (b) The Airline may by notice to PAPL appoint a representative to represent the Airline at these meetings. The Airline's representative may be a person or association representing the Airline and Other Airlines. Any consultation by PAPL with that person or association will be binding on the Airline.

### **7.2 Consultation about works**

- (a) PAPL must provide the Airline with reasonable notice of any maintenance, relocation, extension or reconfiguration work that PAPL intends to undertake that could reasonably be expected to materially affect the Airline or impact on the ability of the Airline to undertake the Permitted Use.
- (b) PAPL will consult with the Airline about the timing, nature and extent of the work, the effect that it may have on the Airline's operations and any interim arrangements or procedures that will apply during the period of that work.
- (c) Provided that PAPL has complied with its obligations under clauses 7.2(a) and 7.2(b), PAPL will have no liability to the Airline in relation to the impact on the Airline's business of any maintenance, capital or other works referred to in clauses 7.2(a) and 7.2(b).
- (d) If as a result of any maintenance, capital or other works or an event of Force Majeure, there is a material adverse effect on the Airline, each of PAPL and the Airline must use their respective Best Endeavours to overcome the matter or event as soon as reasonably practicable after it occurs.

### **7.3 Project Consultative Forum**

- (a) If PAPL intends to undertake a project which may have an adverse impact on the Airline, PAPL may convene a Project Consultative Forum to discuss and assist with the planning and development of that project. A Project Consultative Forum may deal with more than one project.
- (b) The members of a Project Consultative Forum will consist of representatives of PAPL and may include representatives of Other Airlines or other parties with an interest in the project in question. The Airline may by notice in writing to PAPL appoint a representative to represent the Airline on a Project Consultative Forum.
- (c) PAPL must give at least 5 Business Days' notice of any Project Consultative Forum meeting and must cause minutes to be kept and distributed to the Airline and other members. These minutes will be jointly PAPL's Information for the purpose of clause 8.1 and the Airline's Information for the purpose of clause 8.3.
- (d) PAPL must provide relevant information (except information PAPL considers, in its absolute discretion, to be confidential) to the Project Consultative Forum. Information provided to the Project Consultative Forum by PAPL is PAPL's Information for the

purposes of clause 8.1. PAPL gives no warranty or representation in respect of the accuracy or information provided to the Project Consultative Forum.

- (e) The Airline must provide all relevant information to PAPL in relation to the Project Consultative Forum's activities. PAPL will only disclose that information to other members of the Project Consultative Forum with the Airline's agreement or by aggregating the information with the equivalent information provided by others. Information provided by the Airline under this clause 7.3 is Airline's Information for the purposes of clause 8.3.

#### **7.4 PAPL retains discretion**

PAPL retains absolute discretion in the operation of the Airport and is not required to accept or implement the view of any Airline (or any person or association representing the Airline) or any member of a Project Consultative Forum expressed as part of any consultation under this clause 7. However, if PAPL does not accept or implement the views of an Airline or a member of a Project Consultative Forum, it must give reasons. Clause 17 does not apply and PAPL will have no liability to the Airline in relation to the impact on the Airline's business as a consequence of PAPL exercising its discretion under this clause 7.4.

### **8 Information**

#### **8.1 PAPL's Information**

No later than 31 October each year, PAPL must provide the Airline a statement outlining:

- (a) PAPL's forecasts for the following 10 years of total Airport International Passengers, Domestic Passengers, aircraft movements and landed tonnages;
- (b) PAPL's capital expenditure plans in relation to the Services and Facilities for the following ten years including, but not limited to, an explanation of any material changes since the previous statement;
- (c) a statement of actual capital expenditure in relation to the Services and Facilities in the year immediately preceding 30 June and an explanation of any significant variance against the most recent forecast for that year; and
- (d) PAPL's accounts, as required by the Airports Regulations, including relevant segment data and reconciliations of Recovery Charges.

#### **8.2 Airline's use of PAPL's Information**

- (a) Subject to clause 8.2(b), the Airline is permitted to use PAPL's Information obtained under clause 8.1 for the purposes of these Conditions of Use, including:
  - (i) to assist the Airline to consult with PAPL under clause 7; and
  - (ii) by combining the information in an aggregate form for internal reporting concerning the performance of the Airline.
- (b) PAPL's Information is Confidential Information.
- (c) PAPL gives no warranty or representation as to the accuracy or sufficiency of PAPL's Information and is not liable for any Claim or Cost suffered by the Airline due to any reliance of the Airline on PAPL's Information.

### **8.3 Airline's Information**

- (a) No later than midday on the 5<sup>th</sup> Business Day after the end of each calendar month, the Airline must, or must procure its appointed Ground Handling Agent to, provide PAPL with a Statement of Information in respect of the previous calendar month. PAPL may specify the level of detail required for the Statement of Information from time to time.
- (b) The Statement of Information must be in electronic form and show:
  - (i) the movements of all of the Airline's Aircrafts referenced to each aircraft movement during each day; and
  - (ii) the number of arriving Passengers, departing Passengers, Transfer Passengers and Transit Passengers and their baggage referenced to each Airline's Aircraft movement during each day.
- (c) On or before the Commencement Date, the Airline must provide PAPL (to the extent not already provided) details of the MTOW, seating capacity and configuration in respect of the Airline's Aircraft. The Airline must use its Best Endeavours to give PAPL notice of any changes in MTOW and any additional Airline's Aircraft using the Airport as those changes occur.
- (d) The Airline must provide PAPL with any information PAPL reasonably requires concerning the Airline's use of the Airport for the purposes of these Conditions of Use. The Airline must provide this information within 5 Business Days of receiving a request (or any other reasonable time specified in the request).
- (e) If the Airline becomes aware of any errors in the Airline's Information, the Airline must inform PAPL of the error and provide the correct information and an explanation for the error.
- (f) The Airline will keep proper source records of the Airline's Information for a period of 2 years (or any longer period as may be required by Law).

### **8.4 PAPL's use of Airline's Information**

- (a) PAPL is permitted to use the Airline's Information for the purposes of operating the Airport including:
  - (i) to ensure compliance with the Airports Act, the Airports Regulations, the Security Rules or any other Law;
  - (ii) for the good planning, development or operation of the Airport;
  - (iii) by combining the information in an aggregated form, for reporting and discussing activity and performance of the Airport or PAPL or its shareholders but in any event not to disclose the Airline's Information to a third party except in accordance with clause 16.2; and
  - (iv) calculation of Fees and Charges.
- (b) Without limiting clause 16.2(e), the Airline's Information is Confidential Information except to the extent it is aggregated and not attributed to the Airline.

## **8.5 Verification of Airline's Information**

PAPL may, at any time, take steps to verify the Airline's Information including by:

- (a) cross-referencing data collected by the Australian Border Force, Airservices Australia or any Relevant Authority; and
- (b) collecting its own data including counting Passengers embarking or disembarking the Airline's Aircraft.

## **8.6 Inaccurate Statement of Information**

- (a) If PAPL reasonably considers the Airline's Information to be inaccurate:
  - (i) PAPL must notify the Airline of the reasons why it considers the Airline's Information to be inaccurate;
  - (ii) the Airline must respond to PAPL within 5 Business Days;
  - (iii) if PAPL is not satisfied with the Airline's response, or if the Airline provides no response, the Airline must permit an independent auditor appointed by PAPL to inspect the Airline's records (including those held by its agents) for the purposes of correcting the Airline's Information.
- (b) The Airline must pay the Costs of the independent auditor referred to in clause 8.6(a)(iii) unless the Airline has responded to PAPL in accordance with clause 8.6(a)(ii) and the independent auditor confirms that the Airline's Information is accurate, in which case PAPL must pay the Costs of the independent auditor.

## **9 Fees and Charges**

### **9.1 Schedule of Fees and Charges**

PAPL must provide the Airline with a Schedule of Fees and Charges at least annually or whenever those prices are varied. PAPL may provide the Airline with the Schedule of Fees and Charges under this clause 9.1 by publishing the Schedule of Fees and Charges on PAPL's Web Site.

### **9.2 Airline to pay**

The Airline must pay PAPL the Fees and Charges consistent with a Statement of Information (as corrected under clause 8.6 or as estimated by PAPL in its absolute discretion if no Statement of Information has been provided) within 30 days after receipt of a tax invoice.

### **9.3 Tax invoices**

- (a) Tax invoices and statements of account may be provided by PAPL electronically on a monthly basis.
- (b) The Airline must not object to or delay payment of an invoice if it accurately represents the Statement of Information. PAPL may, in its absolute discretion, amend a tax invoice if the Airline corrects an error in the Statement of Information in accordance with clause 8.3(e).

#### **9.4 No fuel throughput levy**

- (a) During the Term, PAPL must not exercise its right to charge or impose on any person any levy, impost or other amount based on the supply or delivery of fuel to the Airline's Aircraft for fuel services provided at the Airport under current contractual arrangements (being contractual arrangements in place as at the Operative Date).
- (b) Clause 9.4(a) does not apply where PAPL seeks to recover its reasonable Costs (including a market based return on any invested capital) in facilitating new supply or increasing competition in relation to fuel supply at the Airport.

#### **9.5 No other fees and charges**

During the Term, PAPL must not impose any fee or charge on the Airline that relates to:

- (a) the activities the Airline is permitted to perform or undertake at the Airport under the licence granted in clause 3.1; or
- (b) the supply of services by PAPL or PAPL's Associates that are within the scope of the Services and Facilities,

except those fees and charges payable under these Conditions of Use, an Other Agreement or otherwise imposed on the Commencement Date.

#### **9.6 Queries**

A query regarding any payment should be directed to Perth Airport Accounts Receivable Clerk by email to [aero@perthairport.com.au](mailto:aero@perthairport.com.au).

#### **9.7 Payment method**

The Airline must make payments under these Conditions of Use by electronic funds transfer to PAPL's nominated bank account (as advised from time to time), or as otherwise directed by PAPL.

#### **9.8 Interest and administration fees for overdue payments**

- (a) The Airline must pay to PAPL:
  - (i) interest at the Default Rate on any amount not paid within 30 days;
  - (ii) an administration fee of \$300 for any amount not paid within 60 days; and
  - (iii) a further administration fee of \$500 for any amount not paid within 90 days; after the receipt of the tax invoice.
- (b) That interest will:
  - (i) accrue on a daily basis and be calculated on daily rests;
  - (ii) be payable on demand or, if no earlier demand is made, the date of actual payment;
  - (iii) be calculated from the due date for payment of the money or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and
  - (iv) be recoverable by PAPL as a debt.

## **10 No guarantee of trade**

Each party acknowledges that:

- (a) neither party has made any representation, expressed or implied, to the other as to the volume of trade which might be anticipated by the other party in the conduct of the Permitted Use at the Airport or the provision of the Services and Facilities; and
- (b) PAPL will not be liable to the Airline for any Claim or loss of profit or diminution in the Airline's business, or the Airline's Associates' businesses, carried on, at or from the Airport resulting from any maintenance, relocation, extension or redesign of the Airport or from any interruption to aircraft or passenger movements.

## **11 Operational terms and conditions**

### **11.1 Occupational safety and health**

- (a) The Airline must itself, and must ensure that its Associates, at all times:
  - (i) comply with:
    - (A) all Occupational Safety and Health Laws which are applicable to the Permitted Use;
    - (B) PAPL's Airport safety policy for the time being communicated in writing to the Airline; and
    - (C) the Airline's current occupational safety and health policy (except to the extent of any inconsistency with paragraphs (A) or (B) or any relevant Law);
  - (ii) not do or fail to do or allow to be done anything in contravention of any Occupational Safety and Health Laws;
  - (iii) comply with notices and directions issued by any Relevant Authority in relation to occupational safety and health relating to the Permitted Use. The Airline must notify PAPL of any notices issued by any Relevant Authority which the Airline or its Associates must comply with in accordance with this clause 11.1;
  - (iv) comply with all lawful directions and notices of PAPL in relation to occupational safety and health relating to the Permitted Use;
  - (v) report any occupational safety and health incident to PAPL as soon as practicable after becoming aware of the incident; and
  - (vi) comply with any occupational safety and health audits or inspections undertaken or required by PAPL and/or any Relevant Authority in relation to the Permitted Use.
- (b) To the extent permitted by Law and subject to clause 11.1(c), each party must keep the other indemnified at all times and on demand against liability of every description arising out of:
  - (i) any incident;
  - (ii) any injury;
  - (iii) any prosecution; or
  - (iv) any Claim by any person for loss, damage, disability, disease or death allegedly suffered as a result of injury or death, caused or contributed to by it or its Associates.

- (c) Each party must ensure so far as is practicable that it does not by its or its Associates' acts or omissions cause or contribute to any breach by the other party of any Occupational Safety and Health Law and must take all steps as are practicable to assist the other party in complying with any Occupational Safety and Health Law. Each party indemnifies the other party on demand to the extent permitted by Law in respect of any Claim whatsoever arising in connection with any breach of the Occupational Safety and Health Law by the other party to which the party or its Associates has contributed by a breach of this clause 11.1(c). The indemnity given under this clause 11.1(c), does not restrict or alter and is not restricted or altered by any indemnity given elsewhere under these Conditions of Use.

## 11.2 Ground Handling Services

- (a) PAPL reserves the exclusive right to grant (and vary) an Airside Operating Licence to any person to provide Ground Handling Services at the Airport on terms acceptable to PAPL.
- (b) The Airline must not obtain Ground Handling Services otherwise than from a Ground Handling Agent licensed under clause 11.2(a). The Airline may require PAPL to enter into negotiations with a person to be licensed under clause 11.2(a).
- (c) The Airline must not, and must ensure its Ground Handling Agent does not, undertake Ground Handling Services (including for the benefit of its Affiliates) unless it, or its Ground Handling Agent (as the case may be), enters into an Airside Operating Licence with PAPL.
- (d) The Airline must:
  - (i) ensure that it has written agreements with its Ground Handling Agent which include an obligation for the Ground Handling Agent to enter into an Airside Operating Licence with PAPL; and
  - (ii) comply with, and ensure its Ground Handling Agent complies with, any Airside Operating Licence entered into with PAPL.

## 11.3 Alterations

- (a) The Airline must not:
  - (i) cause any damage to the Terminal Area or the Airport;
  - (ii) install any electrical equipment which overloads services including any cables, switchboards or sub-boards through which electricity is conveyed to the Terminal Area; or
  - (iii) interfere with or obstruct access to the air conditioning equipment or fire alarm or prevention system installed in the Terminal Area.
- (b) The Airline must not:
  - (i) remove, replace, repair, exchange or alter any part of the equipment, facilities or Installations at the Airport;
  - (ii) install, erect or affix any signage at the Airport;
  - (iii) undertake any alterations, repairs or works at the Airport; or
  - (iv) interfere with the Installations,

without PAPL's consent. PAPL, in its absolute discretion, may refuse, consent or condition its consent under this clause 11.3(b). This clause 11.3(b) does not apply to the Airline's own equipment, facilities or Installations at the Airport.

- (c) If the Airline fails to comply with clauses 11.3(a) or 11.3(b), after giving reasonable notice to the Airline, PAPL may carry out all necessary repairs or works to remedy the failure and the Costs of those repairs or works are to be paid by the Airline to PAPL within 14 days of demand.

## 12 End of Term

- (a) Subject to clause 12(b), on or before the Expiry Date or otherwise within 5 Business Days after the determination of these Conditions of Use, the Airline must remove its property, and ensure that its Associates' property is removed, from the Airport. The Airline must make good any damage done to the Airport as a consequence of it complying with this clause 12(a). Any of the Airline's property (or its Associates' property) not removed in accordance with this clause 12(a) will, at PAPL's election, become the absolute property of PAPL and PAPL may dispose of it in any way it sees fit without being liable in any way to account to the Airline (but at the Airline's Cost).
- (b) Clause 12(a) does not apply and the Airline will not be required to remove its property from the Airport where these Conditions of Use expire as a result of the Airline and PAPL entering into an ASA under Item 2(a) of Schedule 1.

## 13 Liability and indemnity

### 13.1 Risk

The Airline uses the Airport and the Terminal Area at its own risk.

### 13.2 Indirect Loss

Neither party is liable to the other, whether under the law of contract, in tort (including negligence), for breach of statutory duty or otherwise in respect of any Claim for Indirect Loss in connection with these Conditions of Use or the use of the Services and Facilities.

### 13.3 Indemnity

Each party (***Indemnifying Party***) must indemnify and keep indemnified the other party (and its Associates) (***Indemnified Party***) on demand, from and against all Claims, including in respect of or arising from any loss, damage or injury to property or persons, caused by or to the extent contributed to by:

- (a) an act, negligence or default of the Indemnifying Party or its Associates;
- (b) some danger created by the Indemnifying Party or its Associates (whether or not the existence of that danger was or should have been known to it);
- (c) the operation of any equipment, machinery or thing by any person by or on behalf of the Indemnifying Party or its Associates; or
- (d) any other act or thing by or on behalf of the Indemnifying Party or its Associates which may arise from or in relation to its use or operation of the Airport,

except to the extent caused or contributed to by the default or negligence of the Indemnified Party (or its Associates) or which is the subject of a release under clause 13.4.

### **13.4 Release**

To the extent permitted by Law, the Airline releases PAPL from all Claims, whether under the law of contract, in tort (including in negligence), for breach of statutory duty or otherwise for:

- (a) loss or damage caused for any reason to the Airline's Aircraft, its equipment, its load or the property of its crew or passengers at the Airport;
- (b) personal injury caused for any reason to the crew or passengers of, or persons servicing, an aircraft at the Airport;
- (c) any loss the Airline suffers for any reason because the Airport or any part of it is closed (including following evacuation) or any Services and Facilities at the Airport are unavailable;
- (d) any loss the Airline suffers, or any person claiming through the Airline suffers, for any reason because of delays in the movement or scheduling of the Airline's Aircraft;
- (e) any malfunction, defect, breakdown or interruption of the services or PAPL's plant, machinery and equipment at the Airport;
- (f) any loss caused or contributed to by a Provider or the use of or scheduled or extraordinary outage of the Common User Terminal Equipment or Common Use Services; or
- (g) any loss:
  - (i) caused or contributed to by PAPL exercising its rights in accordance with these Conditions of Use including in relation to clause 3.5; or
  - (ii) arising as a consequence of clause 20.9,

except to the extent caused or contributed to by the default or negligence of PAPL.

### **13.5 No warranty**

All statutory or implied conditions, guarantees and warranties in respect of the Airline's use of the Terminal Area and the Services and Facilities are excluded by PAPL to the maximum extent permitted by applicable Law. To the extent permitted by applicable Law, where liability under any condition, guarantee or warranty which cannot legally be excluded but can be validly limited, such liability is limited to, to the maximum extent permitted by Law, such as resupplying the service or paying the cost of having the services supplied again.

## **14 Insurance**

### **14.1 PAPL's insurance**

- (a) PAPL must take out an Airport Owners and Airlines Liability insurance policy of at least \$100 million with a reputable insurer in respect of the Airport in the name of PAPL at least to the extent it is required under its obligations to the Commonwealth.
- (b) In respect of the insurance required under clause 14.1(a), PAPL must:
  - (i) if requested by the Airline (but not more than once per year) provide the Airline evidence of its currency;
  - (ii) pay punctually all premiums;
  - (iii) in the event of any claim made under the policies, apply the insurance moneys to the purpose for which the claim was made; and
  - (iv) not do anything or omit to do anything that causes the insurance to become vitiated or non-effective.

## 14.2 The Airline's insurance

- (a) The Airline must take out and during the Term maintain the following insurance with reputable insurers:
  - (i) a public liability insurance policy of at least the amount specified in Item 5 of Schedule 1 in respect of the Permitted Use carried on at the Airport; and
  - (ii) other insurances which are either required by Law in connection with the Airline's use of the Airport or that a prudent airline or aircraft operator would ordinarily take out.
- (b) In respect of the insurance required under clause 14.2(a), the Airline must:
  - (i) provide PAPL evidence of its currency at least annually and whenever reasonably requested by PAPL;
  - (ii) pay punctually all premiums;
  - (iii) in the event of any claim made under the policies, apply the insurance moneys to the purpose for which the claim was made; and
  - (iv) not do anything or omit to do anything that causes the insurance to become vitiated or non-effective.
- (c) The insurance taken out under clause 14.2(a)(i) must adequately protect and name as co-insured parties PAPL, the Commonwealth and the Airline, and the Airline must ensure that PAPL's, the Commonwealth's and the Airline's interests in this insurance is evidenced in writing by the insurer, to a minimum liability and for an excess the Airline carries in the normal course of its business for any single event.
- (d) The Airline must ensure that its Associates take out insurances of the type described in clauses 14.2(a) as appropriate to their respective roles in relation to the Permitted Use, or that the Airline includes them as named insured under the Airline's policies.

## 15 Privacy

### 15.1 Treatment of Personal Information

Where either party collects any Personal Information in connection with the use of the Services and Facilities, that party:

- (a) must take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
- (b) must not, directly or indirectly use the Personal Information except to the extent necessary to use or provide the Services and Facilities (as the case may be);
- (c) must not disclose the Personal Information whether directly or indirectly to any person without the prior written consent of the other party;
- (d) may disclose the Personal Information to its Authorised Personnel to the extent that they have a need to know for the purpose of using or providing the Services and Facilities (as the case may be);
- (e) must provide appropriate training to the Authorised Personnel with respect to the correct handling of the Personal Information so as to minimise the risk of accidental security breaches;
- (f) must ensure that its internal operating systems only permit Authorised Personnel to access the Personal Information;

- (g) must immediately notify the other party when it becomes aware that use or disclosure of the Personal Information is required or authorised by or under Law; and
- (h) must comply with the *Privacy Act 1988* (Cth), all other applicable privacy legislation and all guidelines issued by the Office of the Federal Privacy Commissioner and similar regulatory bodies.

## **15.2 Personal Information on termination**

On termination or expiry of these Conditions of Use, each party must promptly return to the other or, if requested by the other, destroy all copies of the Personal Information, in which case any right to use, copy or disclose that Personal Information ceases.

## **16 Confidentiality and publicity**

### **16.1 General restriction**

Subject to clause 16.2, a party must not, at any time, use or disclose or allow its Associates to use or disclose to any third party any Confidential Information. A party who discloses Confidential Information in accordance with clause 16.2 must instruct the third party to protect the Confidential Information as if it were its own Confidential Information.

### **16.2 Exceptions**

Confidential Information may be disclosed:

- (a) with the consent of the other party;
- (b) if it is expressly authorised by these Conditions of Use, including under clause 8.4(b);
- (c) to other contractors, officers, employees, consultants, advisers and agents of a party to the extent that the disclosure of such information is reasonably necessary to enable the relevant person to perform any contract, provide services or perform any duties in connection with these Conditions of Use;
- (d) to any person to whom disclosure is reasonably necessary or incidental to the performance of these Conditions of Use;
- (e) by PAPL to third parties who require the information for the safe, secure and efficient operation and development of the Airport (including Airport retailers and the Western Australian Tourism Commission), provided those third parties are obliged to keep that information confidential;
- (f) which is now or in the future comes into the public domain (except as a result of a breach of this clause 16) or which can be obtained with no more than reasonable diligence from sources other than the parties;
- (g) which is required to be disclosed by any Law or by the Listing Rules of the Australian Stock Exchange Limited;
- (h) which is required to be disclosed by act of Law in foreign jurisdictions;
- (i) which is required by any Relevant Authority by force of statute or regulation;
- (j) which it is reasonably necessary to disclose to any existing or prospective insurers or financiers of the party so disclosing;
- (k) inadvertently by deduction, from the disclosure of other information; or
- (l) where the Airline is a member of the Board of Airline Representatives of Australia Incorporated, to the Board of Airline Representatives of Australia Incorporated.

### **16.3 Publicity generally**

The parties must consult with respect to any press release, statement or media announcement proposed to be made by either party and which involves the commercial interests or reputation of the other party and directly relates to these Conditions of Use.

## **17 Disputes**

### **17.1 Initial negotiation**

If a dispute arises under these Conditions of Use, the parties must cause their respective chief executive officers or authorised delegates to meet and attempt to resolve the dispute by negotiation in Good Faith.

### **17.2 Disputes to be referred to an Expert**

If the parties cannot promptly resolve the dispute in accordance with clause 17.1, either party may refer the dispute to a person agreed between the parties, or failing agreement within 7 Business Days:

- (a) if the dispute is over the construction of these Conditions of Use, to a Queen's Counsel or Senior Counsel practising in Perth of not less than 5 years standing appointed by the President of the Law Society of Western Australia or his/her nominee; or
- (b) if the dispute is over any other matter, to a professional with qualifications appropriate to the matter under dispute appointed by the Chapter Chairperson of the Resolution Institute (Western Australian Chapter) or the Chairperson's nominee.

### **17.3 Expert's decision final and binding**

The person to whom the dispute is referred (**Expert**) acts as an expert and not as an arbitrator. In the absence of manifest error, the Expert's decision is final and binding on the parties, subject to clause 17.10.

### **17.4 Expert to provide opinion**

The Expert must provide his/her opinion in writing within 5 Business Days after the dispute was referred to him, or a longer period to which both parties agree, acting reasonably.

### **17.5 Powers of Expert**

The Expert may investigate, call witnesses and take the advice of other experts the Expert deems appropriate.

### **17.6 Costs**

The Cost of referring a dispute to an Expert, and the Expert's Costs are to be shared equally by the Airline and PAPL.

### **17.7 Representation**

At any hearing conducted by the Expert each party may appear personally, or be represented by any person including a qualified legal practitioner.

### **17.8 Conduct of proceedings**

The Expert may make investigations and conduct the proceedings in any way the Expert thinks fit. The parties must give the Expert all assistance and provide documents and make submissions as required by the Expert.

### **17.9 Dispute not to interfere with obligations**

The existence or referral of a dispute does not affect either party's obligation to perform its obligations under these Conditions of Use (including an obligation to pay).

### **17.10 Condition precedent to legal proceedings**

A party must not begin legal proceedings over any matter arising out of these Conditions of Use unless:

- (a) the matter arising has first been referred to, and determined by, an Expert, and the legal proceedings arise from an error of Law, corruption, fraud, partiality, bias or a breach of the rules of natural justice by the Expert; or
- (b) urgent interlocutory relief is sought.

### **17.11 Expert Determination Rules**

Unless otherwise agreed between the parties, the Rules for Expert Determination from time to time of the Australian Disputes Centre (or its replacement, if any) will apply to the dispute resolution process in this clause, except to the extent that they are inconsistent with any provision of these Conditions of Use.

### **17.12 Consolidation of disputes**

If there is a dispute between the parties which has the same subject matter as a dispute between PAPL and one or more Other Airlines, PAPL may by notice in writing to the Airline and the relevant Other Airlines, consolidate the disputes and refer them to the same Expert for determination simultaneously subject to any conditions the Expert considers appropriate. PAPL and the Airline are then required and bound to have the disputes determined in this manner and clause 17.6 applies.

## **18 Default**

### **18.1 Other rights**

Nothing in this clause 18 derogates from any right of either party under the general Law to exercise any right including termination of these Conditions of Use by reason of a default or repudiation by the other party.

### **18.2 Events of Default**

An Event of Default occurs if:

- (a) the Airline fails to pay to PAPL any money payable in accordance with these Conditions of Use;
- (b) the Airline omits or fails to observe or perform any term, condition or obligation of these Conditions of Use other than an inconsequential term, condition or obligation required to be observed or performed by the Airline,
- (c) a change occurs in the business assets or financial condition of the Airline, or of the Airline and its related entities taken as a whole, which in the reasonable opinion of PAPL may have a material adverse effect on the ability of the Airline to perform or observe its obligations under these Conditions of Use;
- (d) a representation or warranty made or taken to be made by or on behalf of the Airline in connection with these Conditions of Use is found or notified by the Airline to be incorrect or misleading when made or taken to be made;
- (e) the Airline assigns or purports to assign its interest in these Conditions of Use; or

- (f) the Airline seeks to have any service provided by PAPL declared under Part IIIA of the Competition and Consumer Act or seeks to take advantage of a declaration under Part IIIA of the Competition and Consumer Act of any service provided by PAPL.

### **18.3 Consequences of an Event of Default**

Subject to resolution of a dispute under clause 17, if an Event of Default occurs, PAPL may do any or all of the following:

- (a) cease to supply or suspend the Services and Facilities (or any part of the Services and Facilities);
- (b) terminate these Conditions of Use by giving notice to the Airline; and
- (c) re-enter and prevent the Airline's use of the Airport or any part of it,

but without prejudice to any Claim which PAPL may have against the Airline in respect of any breach of these Conditions of Use.

### **18.4 Default notice**

In the case of an Event of Default described in paragraphs (a) or (b) of clause 18.2, PAPL must not exercise its rights under clause 18.3 unless the Airline has failed to remedy the Event of Default within 14 days of PAPL giving it notice to do so.

### **18.5 Termination on Insolvency**

Either party may terminate these Conditions of Use:

- (a) by written agreement with the other party; or
- (b) unless prohibited by Law, by notice in writing to the other party, on or during the continuance of an Insolvency Event occurring to the other party.

### **18.6 Airport Lease**

These Conditions of Use automatically terminate when the Airport Lease expires or otherwise ends.

### **18.7 Mandatory terms – Automatic termination under Airports Act and Airports Regulations**

- (a) In accordance with the Airports Act and the Airports Regulations, these Conditions of Use are automatically terminated upon the creation of an interest in these Conditions of Use in favour of a person that is, either alone or with one or more associates (as defined in the Airports Act), in a position to exercise control over either or both of:
  - (i) the operation of the whole, or a substantial part of, the Airport; or
  - (ii) the direction to be taken in the development of the whole, or a substantial part of, the Airport.
- (b) Any further licence, sub-licence or extension of these Conditions of Use and the rights granted by these Conditions of Use must contain a term to the same effect as the provisions of clause 18.7(a).

## 18.8 Consequences of termination

If these Conditions of Use are terminated in accordance with this clause 18 or any other provision of these Conditions of Use, the Airline must:

- (a) immediately cease operations from the Terminal Area; and
- (b) comply with clause 12,

and the Airline acknowledges that it no longer has the right to use the Airport but if PAPL allows the Airline to use the Airport (such as in the case of emergency), the Airline must pay on demand all charges reasonably determined by PAPL at the time.

## 19 GST

### 19.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with these Conditions of Use, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### 19.2 Reimbursement

If these Conditions of Use require a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

### 19.3 Adjustment events

If at any time an adjustment event arises in respect of any supply made by a party under these Conditions of Use, a corresponding adjustment must be made between the parties in respect of any amount paid to that party by the other party pursuant to clause 19.1 and payments to give effect to the adjustment must be made and the supplier must issue an adjustment note.

## 20 Miscellaneous

### 20.1 PAPL to act reasonably

Except where expressly provided for otherwise, where PAPL's consent or approval is required under these Conditions of Use, PAPL must act reasonably having regard to the history of the use of the Airport by the Airline and Other Airlines and the potential impact on the Airline and Other Airlines as a result of the decision to grant or withhold its consent or approval, or the imposition of conditions on any consent or approval.



in the place specified by the intended recipient as its postal address under clause 20.2(b), it will be conclusively taken to have been duly given or made and received at 9am on the next Business Day in that place.

### **20.3 Further assurance**

Each party must promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of these Conditions of Use and any transaction contemplated by it.

### **20.4 Rights cumulative**

Subject to any express provision in these Conditions of Use to the contrary, the rights of a party under these Conditions of Use are cumulative and are in addition to any other rights of that party.

### **20.5 No waiver**

- (a) A failure to exercise or a delay in exercising any right, power or remedy under these Conditions of Use does not operate as a waiver.
- (b) A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) The doctrine of affirmation by election will not apply to any failure by a party to exercise, or delay by a party in exercising, any right, power or remedy under these Conditions of Use.
- (d) A party will not be liable for any Claim of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **20.6 Set-Off**

- (a) The Airline must not make any set-off against, deduction from or withhold for any reason any amount payable by the Airline to PAPL under these Conditions of Use.
- (b) If the Airline fails to pay to PAPL any money payable in accordance with these Conditions of Use (whether or not a formal demand for payment has been made), without waiving that default, PAPL may set-off that amount against any amount payable by PAPL to the Airline.

### **20.7 Costs**

Subject to any express provision in these Conditions of Use to the contrary, each party must bear its own legal and other Costs and expenses relating directly or indirectly to the performance of its obligations under, these Conditions of Use except that the Airline must pay PAPL's Costs:

- (a) relating to a request by the Airline for PAPL's consent or approval under these Conditions of Use; and
- (b) incurred by PAPL in enforcing its rights or the Airline's obligations under these Conditions of Use.

## **20.8 Requirements of authorities**

- (a) Each party must at its own Cost comply with all requirements of the Airports Act and the Airports Regulations and all statutes, ordinances, proclamations, by-laws, orders or regulations present or future affecting or relating to that party's activities and operations at the Airport, and with all lawful requirements which may be made, or notice or orders which may be given to PAPL or the Airline in respect of the same, by any Relevant Authority.
- (b) The Airline must promptly provide PAPL with evidence of its compliance with clause 20.8(a) when requested to do so by PAPL.
- (c) If, in PAPL's opinion, the Airline fails, neglects or refuses to comply with the Airports Act, the Airports Regulations or any other statute, ordinance, proclamation, by-law, order, regulation, requirement or notice, it will be lawful for but not obligatory for PAPL, where practical, to comply with the same and all monies paid by PAPL in connection with this compliance must be paid by the Airline to PAPL on demand.

## **20.9 Force Majeure**

PAPL's obligations under these Conditions of Use are subject to Force Majeure. If an event of Force Majeure occurs, PAPL's obligations under these Conditions of Use are suspended and PAPL can respond to and deal with the event of Force Majeure in any way it considers appropriate (in its absolute discretion).

## **20.10 Survival of terms**

Any provision of these Conditions of Use which is capable of operating following the expiration or sooner determination of these Conditions of Use will continue to remain in full force and effect (including clauses 15, 16, 17, 18.8 and 19).

## **20.11 Severance**

Any provision of these Conditions of Use which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of these Conditions of Use nor affect the validity or enforceability of that provision in any other jurisdiction.

## **20.12 Entire agreement**

These Conditions of Use and the Airport Operating Protocol embody the entire understanding and agreement between the parties with respect to their subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of these Conditions of Use and the Airport Operating Protocol are merged in and superseded by these Conditions of Use and will be of no force or effect whatever and no party will be liable to any other party in respect of those matters. No oral explanation or information provided by any party to another will:

- (a) affect the meaning or interpretation of these Conditions of Use or the Airport Operating Protocol; or
- (b) constitute any collateral agreement, warranty or understanding between any of the parties.

### **20.13 Governing law and jurisdiction**

These Conditions of Use are governed by and are to be construed in accordance with the Laws in force in Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **20.14 Proportionate liability**

- (a) It is agreed that to the extent permitted by Law, Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities under these Conditions of Use whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 20.14(a), it is further agreed that the rights, obligations and liabilities of PAPL and the Airline (including those relating to proportionate liability) are as specified in these Conditions of Use and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

### **20.15 Capacity and effect of execution**

Each party warrants to the other that they have full capacity to meet the obligations placed upon them by this Agreement.

### **20.16 No partnership**

These Conditions of Use do not create a partnership, joint venture or principal and agent relationship between the parties. Unless otherwise expressly stated, a party does not have the authority to bind any other party or act as agent for any other party.

## Schedule 1 – Details

| <b>Item</b> | <b>Term</b>  | <b>Definition</b>   |
|-------------|--|---|
| 1           | <b>Commencement Date</b>                               | The later of:<br><ul style="list-style-type: none"><li>(a) the Operative Date; and</li><li>(b) the date the Airline commences using the Services and Facilities or carrying on the Permitted Use at the Airport.</li></ul>  |
| 2           | <b>Expiry Date</b>                                     | The earlier of:<br><ul style="list-style-type: none"><li>(a) the date on which PAPL and the Airline enter into an ASA;</li><li>(b) the date the Airline ceases using the Services and Facilities at the Airport as notified to PAPL in writing; and</li><li>(c) the date these Conditions of Use are otherwise terminated, including under clause 18.</li></ul> |
| 3           | <b>Term</b>  | The period commencing on the Commencement Date and ending on the Expiry Date.   |
| 4           | <b>Frequency of consultation meetings</b> (clause 7.1) | Annually.   |
| 5           | <b>Public Liability Insurance</b> (clause 14.2)        | \$100 million.  |

## **Schedule 2 – Services and Facilities**

This Schedule 2 describes the Services and Facilities that PAPL will provide to the Airline at the Airport and the Terminal Area (as appropriate) in accordance with the terms of these Conditions of Use.

### **1 Aircraft Movement and Storage**

24-hour access to:

- (a) the runways, taxiways, and common use aprons;
- (b) the airfield in general and in particular the airfield grounds and roads, and airside and airfield lighting;
- (c) areas for parking the Airline's and its Ground Handling Agent's ground service equipment; and
- (d) subject to the Airport Operating Protocol, areas for storage of the Airline's Aircraft, at the Airport for the purpose of carrying out the Permitted Use.

### **2 Passenger Terminal**

24-hour access in the Terminal Area to:

- (a) visual navigation aids and nose-in guidance systems;
- (b) the inwards and outwards baggage system including baggage make-up areas and reclaim facilities and hold and cabin luggage screening equipment;
- (c) toilets for the Airline's Passengers and staff (in common use with others);
- (d) directional signage;
- (e) flight information systems;
- (f) check-in and service desks (except to the extent provided by the Airline);
- (g) facilities to allow the Airline's Passengers to board the Airline's Aircraft including boarding gate desks;
- (h) where Passengers are not boarding aircraft via an aerobridge, suitable access to the aircraft apron and where required bussing services to the aircraft apron;
- (i) facilities in which the Airline's Passengers may wait prior to boarding the Airline's Aircraft but excluding commercially important persons lounges;
- (j) emergency and public address systems;
- (k) public areas in terminals including public amenities, lifts, escalators and moving walkways; and
- (l) forward airline support area services, such as areas to park ground service equipment.

### **3 Aerobridges**

PAPL will provide aerobridges in Terminals 1 and 3.

### **4 Common Use Services**

Services provided by PAPL (or its Provider) to the Airline to provide terminal access from the Common Use Terminal Equipment to the Airline's departure control systems.

## **5 Common Use Terminal Equipment**

The equipment provided by PAPL (or its Provider) at the Airport including computer workstations, monitors, keyboards, mice, printers and barcode scanners and, in Terminals 1 and 2, common use self-check-in and bag drop-off facilities.

## **6 Border Agencies and Safety and Security**

PAPL will provide public areas for Commonwealth Government border agencies to discharge their functions in terminals processing International Passengers.

PAPL will provide terminal safety and security services, including the screening of passengers and their accompanied baggage, in accordance with the standards set by any Relevant Authorities.

## **7 Access**

PAPL will provide and manage the necessary infrastructure to enable the Airline and the Airline's Associates to access the Airline's Aircraft, facilities and other premises at the Airport. This infrastructure includes roads (including kerb and guttering), footpaths, covered walkways and signage.

## **8 Exclusions from Services and Facilities**

As at the Operative Date, PAPL does not provide the following as part of the Services and Facilities:

- (a) terminal navigation services;
- (b) aviation rescue and firefighting services;
- (c) en-route services;
- (d) meteorological services;
- (e) Ground Handling Services, refuelling or engineering services; and
- (f) catering.

PAPL can provide on request a list of contractors and service agents providing these services that are currently licensed to operate at the Airport. If PAPL offers any of these services in the future, the parties may enter in an Other Agreement in respect of the provision of those services.

## **9 Other services provided by PAPL not under these Conditions of Use**

PAPL may provide other services to the Airline under Other Agreements which are not part of the Services and Facilities. These may include:

- (a) car parking facilities for the Airline's Associates and Passengers;
- (b) offices for the use of the Airline or its Ground Handling Agents;
- (c) lounges for commercially important persons; and
- (d) sites or buildings for the Airline to undertake any activity that PAPL and the Airline may agree.

The provision of services under Other Agreements and the payment for those services is separate to the Airline's obligations to pay the Fees and Charges under these Conditions of Use.

**Schedule 3 – Service levels**