



# **Brisbane Airport Aviation Services and Charges Agreement – Terminals, Aprons & Related Infrastructure**

Dated 1 January 2019

Brisbane Airport Corporation Pty Limited  
ABN 54 076 870 650  
**(BAC)**

ABN  
**(Airline)**

# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure

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# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure Parties

Parties	BAC and Airline	
<b>BAC</b>	Name	<b>Brisbane Airport Corporation Pty Limited</b>
	ABN	54 076 870 650
	Address	11 The Circuit, Brisbane Airport, Queensland 4008
	Telephone	(07) 3406 3000
	Fax	(07) 3406 3111
	Attention	Chief Financial Officer
<b>Introduction</b>	A.	BAC is the airport lessee company and operator of Brisbane Airport under a 50 year lease (plus a 49 year option) granted by the Commonwealth commencing 2 July 1997.
	B.	BAC agrees to supply to Airline the Aviation Services and the Government Mandated Services on the standard terms and conditions of this Agreement.
	C.	Airline agrees to comply with the terms and conditions of this Agreement.
	D.	The arrangements documented in this Agreement have been agreed between the parties having regard to the Aviation Services and the Government Mandated Services to be provided by BAC, the Term, the charges payable by Airline and BAC's Investment Strategy.
	E.	This Agreement sets out the terms and conditions upon which BAC agrees that Airline can use the Terminals, Aprons & Related Infrastructure at Brisbane Airport and covers a range of matters, including but not limited to: <ul style="list-style-type: none"> <li>(i) Aviation Services and Government Mandated Services provided at Brisbane Airport;</li> <li>(ii) BAC's Investment Strategy;</li> <li>(iii) applicable charges for the Aviation Services and the Government Mandated Services;</li> </ul>

- (iv) practical matters regarding the payment of charges;
- (v) consultation in relation to Aviation Services; and
- (vi) general terms and conditions which apply to Airline's use of the Terminals, Aprons & Related Infrastructure at Brisbane Airport.

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**Governing Law**      Queensland

# **Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure**

## **General conditions**

### **1. Term of this Agreement**

This Agreement commences on the Start Date and concludes on the Expiry Date unless terminated earlier in accordance with the provisions of this Agreement.

### **2. Facilities and Services at Brisbane Airport**

#### **2.1 Facilities and Services at Brisbane Airport**

BAC agrees to provide Airline Aviation Services and Government Mandated Services:

- (a) for the Term, subject to the Terms and Conditions of this Agreement and all applicable laws and regulations; and
- (b) with all due care and skill and otherwise in a manner consistent with current best practice for a comparable domestic and international airport.

#### **2.2 Restriction and/or prohibition of Airline's use of Brisbane Airport**

BAC may restrict or prohibit Airline from using Brisbane Airport or place conditions on Airline's use of Brisbane Airport to the extent required by the provisions of:

- (a) the *Airports Act 1996* (Cth) as that relates to access to Brisbane Airport;
- (b) the obligations under any Bilateral Agreement; and
- (c) any other applicable law.

### **3. Not used**

### **4. Aviation Charges**

#### **4.1 Payment for Aviation Charges**

- (a) Airline agrees to pay the Aviation Charges (or the reasonable estimate calculated under clause 18.4(b)) relating to Airline's use of the Aviation Services.
- (b) The Aviation Charges are payable by Airline in accordance with clauses 7 and (if applicable) 8 of this Agreement.

#### **4.2 Variation of Charges**

- (a) BAC may increase the Aviation Charges to take account of:
  - (i) the net effect of any new costs; and
  - (ii) a Reasonable Return on Capital Costs,which are imposed on BAC or which BAC is required to incur under or by legislation, administrative direction or authority, taxation or similar impost; and

- (b) other than allowed pursuant to clauses 4.2(a), 5.2(c) and 10.4 of this Agreement, BAC will not impose or recover, or attempt to recover, any new or additional fees, charges or levy considerations that are not in place as at the Start Date on Airline or Airline's contractors or suppliers engaged in the normal servicing of Airline's aircraft in relation to the provision of Aviation Services at Brisbane Airport; and
- (c) subject to clause 4.2(b), BAC is not restricted from negotiating a fee, charge or levy upon any person relating to access to Brisbane Airport.

## **5. Government Mandated Costs and Government Mandated Charges**

### **5.1 Introduction to Government Mandated Costs and Charges**

- (a) BAC will incur the Government Mandated Costs relating to the provision of Government Mandated Services.
- (b) BAC will recover Government Mandated Costs from Airline by charging Airline the Government Mandated Charges on a "pass-through" basis.
- (c) The Government Mandated Charges at the Start Date are as set out in Schedule 4.
- (d) Airline will pay to BAC the Government Mandated Charges relating to the Government Mandated Services.

### **5.2 Government Mandated Costs**

- (a) Government Mandated Costs will be determined by BAC in relation to the provision of Government Mandated Services which are regulated, directed or otherwise required by DIRDAC, the Commonwealth Government or any other relevant authority from time to time.
- (b) If:
  - (i) BAC invests in additional infrastructure or equipment for the purpose of providing or facilitating the provision of any Government Mandated Services; and
  - (ii) the capital cost of the investment is less than \$1 million in relation to any one project,

BAC and Airline agree that the capital cost of the investment will be deemed to be a Government Mandated Cost that is incurred within the 6 month period in which the capital costs are incurred. BAC will notify Airline of any changes to the Government Mandated Charges in accordance with clauses 5.3 and 26.

- (c) If:
  - (i) BAC invests in additional infrastructure or equipment for the purpose of providing or facilitating the provision of any Government Mandated Services; and
  - (ii) the capital cost of the investment exceeds \$1 million in relation to any one project,

Airline agrees that instead of increasing the Government Mandated Charges:

- (iii) BAC will be entitled to recover the costs associated with that capital expenditure and a Reasonable Return on Capital Cost as part of the Aviation Charges; and
- (iv) BAC may at any time adjust the Aviation Charges, as permitted by clause 4.2(a), to take account of that capital cost and a Reasonable Return on Capital Cost.

### **5.3 Recovery of Government Mandated Costs through the Government Mandated Charges**

- (a) BAC will undertake a bi-annual reconciliation of the Government Mandated Charges.
- (b) Any under or over recoveries of Government Mandated Costs in any particular 6-month period will be adjusted in the following period by increasing or reducing Government Mandated Charges for the following period.
- (c) BAC will give Airline 30 days' notice of any changes in Government Mandated Charges resulting from any under or over recoveries. This notice will be accompanied by a reconciliation which will include summary details relating to Government Mandated Costs, revenue from Government Mandated Services, and any over or under recoveries.
- (d) For the avoidance of any doubt, Government Mandated Costs will be net of any external funding of Government Mandated Services.

### **5.4 BAC's management of Government Mandated Charges and Government Mandated Services**

- (a) BAC will use reasonable endeavours to manage the Government Mandated Charges and provide the Government Mandated Services in an economically efficient and cost effective manner having regard to best practice in the industry and the service levels mandated by the Commonwealth Government.
- (b) Where possible, BAC will take reasonable steps, to manage third party costs and any third party contractors to efficiently manage the Government Mandated Costs.

### **5.5 Provision of Government Mandated Services by other entities**

- (a) Airline acknowledges and agrees that during the Term other entities may become authorised or may be required to become authorised and provide Government Mandated Services.
- (b) In this event, BAC and Airline agree to negotiate in good faith any changes reasonably required to facilitate the ongoing provision of Government Mandated Services and the recovery of costs of providing Government Mandated Services on a pass-through basis.
- (c) BAC will not impose Government Mandated Charges or seek to recover the Government Mandated Costs from Airline to the extent that Airline is an authorised airline performing the Government Mandated Services.

## **6. Requirement for Security**

### **6.1 Security**

- (a) BAC may, at any time, impose a condition requiring that Airline give BAC security in the form of:

- (i) an unconditional bank guarantee:
  - (A) payable on demand;
  - (B) from an institution and on terms satisfactory to BAC; or
- (ii) retention monies:
  - (A) paid direct to BAC;
  - (B) held by BAC for the course of Airline's use of Brisbane Airport under this Agreement; and
  - (C) which BAC may use at any time to pay itself any amount owed by Airline to BAC pursuant to this Agreement,

(**Security**), for the amount of Aviation Charges and Government Mandated Charges BAC estimates will be payable by Airline for up to a period of 6 months as determined from time to time by BAC (**BAC's Estimate**).

- (b) BAC may increase the amount of BAC's Estimate if it considers it necessary to do so based on the charges Airline has incurred at any time by giving Airline 30 days' notice (**BAC's Revised Estimate**), in which case Airline must provide BAC:
  - (i) a supplementary Security for the additional amount required by BAC's Revised Estimate; or
  - (ii) replacement Security for the total amount of BAC's Revised Estimate.

## 6.2 Replacement Security

If BAC gives notice to Airline that it has had recourse to any Security provided by Airline in accordance with this Agreement, Airline must provide BAC with either:

- (a) replacement Security for the same amount as the Security which BAC has called on; or
- (b) replacement Security for an amount that BAC, acting reasonably, considers appropriate given:
  - (i) the Aviation Charges and Government Mandated Charges incurred by the Airline in the six month period prior to the giving of the notice under this clause 6.2; and
  - (ii) any other outstanding amounts owed by Airline to BAC under any other agreement between the Airline and BAC.

## 6.3 Failure to provide Security

- (a) If BAC requires Airline to provide BAC with Security, a supplementary Security, additional Security or replacement Security in accordance with clause 6.1 or 6.2, then Airline must do so within 21 days from the date BAC notifies Airline to do so.
- (b) Failure by Airline to provide BAC with Security, supplementary Security, additional Security or replacement Security within the time specified by clause 6.3(a) will enliven BAC's rights under clause 9.2.

## **7. Payment of Aviation Charges and Government Mandated Charges**

### **7.1 When Airline must pay**

If Airline does not have a credit account with BAC, Airline must pay BAC the invoiced Aviation Charges and Government Mandated Charges that are applicable from time to time in accordance with this clause 7.

### **7.2 Currency of payment**

The Aviation Charges and the Government Mandated Charges are calculated and payable in Australian Dollars.

### **7.3 Timing and method for payment**

- (a) Following the receipt of an invoice from BAC under clause 7.1, Airline must pay BAC the Aviation Charges and the Government Mandated Charges before any of Airline's aircraft leaves Brisbane Airport.
- (b) Airline's payments must be by direct deposit to BAC's Bank Account. BAC will supply account details to Airline upon request.

## **8. Credit accounts for Aviation Charges and Government Mandated Charges**

### **8.1 Application for credit account**

Airline may apply for a credit account with BAC for Aviation Charges and Government Mandated Charges by completing and submitting a Credit Application.

BAC is not obliged to approve Airline's Credit Application.

### **8.2 Operation of credit account**

If BAC approves Airline's Credit Application, BAC will notify Airline and establish a credit account for Airline. If Airline has a credit account with BAC, Airline must pay BAC's Aviation Charges and Government Mandated Charges on the following basis:

- (a) BAC will provide Airline with monthly tax invoices; and
- (b) Airline must pay the tax invoices within 28 days after the end of the calendar month to which the tax invoice relates; and
- (c) Airline's payments must be by direct deposit to BAC's Bank Account (BAC will supply account details to Airline on request).

### **8.3 Changes to Information Provided on Credit Application**

Airline must provide BAC with details of any changes to the information provided on Airline's Credit Application made under clause 8.1 within 30 days of the date of the change.

### **8.4 Suspension or cancellation of credit account**

BAC may suspend or cancel Airline's credit account at any time by giving Airline 7 days' notice.

## **9. If Airline does not pay on time**

### **9.1 Late payment of Aviation Charges and Government Mandated Charges**

If Airline does not pay BAC's tax invoices when due then BAC may charge Airline interest on the following basis:

- (a) interest is calculated at the Interest Rate on daily balances from the due date for payment until the date all of the outstanding amount is paid; and
- (b) unpaid interest is capitalised as at the first day of each month.

BAC will not charge interest on any amount (which, for the avoidance of doubt, may only be a partial amount) that is the subject of a bona fide dispute under clause 23 until and from such time as that dispute is resolved in accordance with clause 23.

In the case of a bona fide dispute, any amounts invoiced but not disputed (or portions of same) are to be paid within the time period required by the invoice.

## 9.2 Unpaid Amounts and Failure to Provide Security

If Airline does not:

- (a) pay BAC an amount owed pursuant to this Agreement (**Outstanding Charges**); or
- (b) provide BAC with Security, supplementary Security, replacement Security or additional Security as required by clause 6 of this Agreement,

within 21 days after the due date (the **Demand Period**), BAC may:

- (c) refuse to allow Airline to use Brisbane Airport; and
- (d) take any other legal action against Airline to recover all due amounts, charges and interest that Airline owes BAC, including issuing Airline with a statutory demand for any debt Airline owes BAC which is due and payable for 21 days or more; and
- (e) use reasonable means to detain Airline's aircraft until Airline has paid all Outstanding Charges provided that:
  - (i) BAC has first tried to recover the outstanding charges or Security from Airline by way of demand; and
  - (ii) BAC has provided notice to Airline at least 14 days in advance of the first day on which it intends to refuse access to Brisbane Airport. BAC may issue a notice commencing the 14 day notice period described in this clause 9.2 at any time during or after the Demand Period.

## 9.3 Disputes

If Airline notifies BAC that Airline disputes a charge on a tax invoice within 7 days of receipt of the tax invoice, BAC may (acting reasonably):

- (a) accept the dispute of the charge and notify Airline that clause 23 applies; or
- (b) not accept the dispute of the charge and notify Airline that clause 23 does not apply.

## 9.4 Further Rights - Right to detain aircraft

If Airline does not pay the Aviation Charges or the Government Mandated Charges on time then BAC may detain Airline's aircraft and hold Airline's aircraft pending payment.

## 9.5 Application to Court

If, pursuant to clause 9.4, BAC detains Airline's aircraft due to non-payment of Aviation Charges or Government Mandated Charges and the

charges are still not paid within twenty-one (21) days of notification of detention (or reasonable attempts to notify Airline has been made), BAC may apply to the appropriate Queensland Court seeking an order to sell the aircraft to recoup all outstanding charges. Airline will also be responsible for payment of all of BAC's legal costs.

#### **9.6 Other costs and charges**

This Agreement does not cover the provision of General Airport Services provided by BAC or the recovery of BAC's costs and charges for the provision by BAC of these services. General Airport Services are available for use from BAC on separate commercial terms and commercial rates that will be negotiated between Airline and BAC.

### **10. Consultation in relation to Aviation Services**

#### **10.1 Periodic Consultation**

BAC agree to meet with Airline at least twice in each Financial Year (or at such other frequency as BAC may agree with Airline from time to time) to consult on the following matters:

- (a) traffic developments and forecasts at Brisbane Airport;
- (b) each of the following, as they relate to the Terminals, Aprons & Related Infrastructure:
  - (i) BAC's Investment Strategy;
  - (ii) capital and operating expenditure;
  - (iii) BAC's cost management of operations, maintenance and project delivery;
  - (iv) quality or appropriateness of service standards;
  - (v) Airline's future needs;
- (c) any changes to Aviation Charges BAC proposes to make under clauses 4.2, 5.2(c) or 10.4(c); and
- (d) any other matters agreed between BAC and Airline (both acting reasonably).

#### **10.2 Meetings**

BAC will prepare an agenda and provide it to Airline before a periodic consultation meeting, and will prepare and circulate minutes for those meeting.

Airline acknowledge that:

- (a) any meetings between BAC and Airline under this clause 10.2 do not create any obligation on BAC to act in any particular way in relation to any particular issue; and
- (b) these meetings may be attended by other users of the Aviation Services BAC provides at Brisbane Airport.

Airline may by notice in writing to BAC appoint a representative to represent Airline at these meetings. Airline's representative may be a person or association representing Airline and other operators, and any consultation by BAC with that person or association will be deemed to be consultation with Airline.

## **11. Operating at Brisbane Airport**

### **11.1 Airline's use of Brisbane Airport**

Subject to clause 11.2 , Airline must:

- (a) comply with the Brisbane Airport Aerodrome Manual;
- (b) comply with the Terminal Operations Procedures;
- (c) comply with the Brisbane Airport Transport Security Programme;
- (d) comply with the Brisbane Airport Emergency Plan;
- (e) comply with all Applicable Laws and Regulations;
- (f) comply with the Brisbane Airport Environment Strategy;
- (g) comply with the Brisbane Airport Master Plan;
- (h) comply with the Brisbane Airport Lease;
- (i) comply with the Aviation Services & Charges Agreement – Runway System;
- (j) comply with any restrictions on flying operations that may be in place from time to time by the relevant statutory authority;
- (k) comply with reasonable safety and security directions notified by BAC from time to time and necessary for the day to day operation of Brisbane Airport;
- (l) comply with Civil Aviation Safety Authority and Airservices Australia rules and regulations, orders, instructions, directions and notices (including those relating to air traffic control);
- (m) comply with the requirement to obtain and observe the relevant operator licences issued by BAC which include, but are not limited to, airside licences, airside driving licences and holding a current and valid ASIC;
- (n) comply with any legally binding directions on security issued by the DIRDAC or any other law enforcement authority;
- (o) at all times hold insurances in accordance with the Minimum Insurance Requirements;
- (p) use reasonable endeavours to comply with any noise management procedures or regulations in place from time to time (including those issued by any relevant statutory authority);
- (q) comply with occupational health and safety laws or regulations in place from time to time, and any reasonable direction by BAC (or BAC's contractors and agents) in relation to occupational health and safety matters at Brisbane Airport;
- (r) comply with any applicable Brisbane Airport ICT policies;
- (s) do nothing to prevent BAC from observing its obligations under the Applicable Laws and Regulations;
- (t) do nothing and not permit anything to be done that might prejudice, or provide grounds for termination of, BAC's interest in Brisbane Airport; and
- (u) ensure that Airline's employees, agents and contractors comply with the terms of this Agreement.

## **11.2 Updates to certain information**

- (a) Airline must ensure Airline is aware of the current version of the relevant document/requirement as listed in clause 11.1 as applicable from time to time.
- (b) BAC is not required to give Airline information if doing so would breach a law, security restrictions or a confidentiality obligation applicable to BAC. If this clause applies, BAC may issue a redacted document or other notification of particular information which informs Airline of its obligations or BAC's requirements, whilst also complying with legal, security restrictions or confidentiality obligations (as the case may be).

## **12. Parking and Aircraft Removal**

### **12.1 Movement and removal of aircraft**

In accordance with the Brisbane Airport Aerodrome Manual, and subject to air traffic clearances and any emergencies (as reasonably determined by BAC), on reasonable prior notice Airline agrees to:

- (a) move a parked aircraft to another position in Brisbane Airport; or
  - (b) remove a parked aircraft from Brisbane Airport,
- at Airline's cost and within any reasonable time specified by BAC.

### **12.2 Failure to move or remove aircraft**

If Airline does not comply with a request under clause 12.1, then BAC may move or remove the aircraft at Airline's cost. In doing so, BAC will:

- (a) follow applicable procedures in the Brisbane Airport Aerodrome Manual; or
- (b) notify Airline of:
  - (i) the date and time of the move or removal; and
  - (ii) where the aircraft has been, or is to be, moved to; and
  - (iii) the means used, or to be used, to move the aircraft; and
  - (iv) any conditions that will apply to Airline's recovery of the aircraft.

Except in the case of an emergency BAC must make reasonable efforts to notify Airline a reasonable period before moving an aircraft. If BAC cannot do so, BAC will notify Airline as soon as possible after the aircraft has been moved.

### **12.3 Liability for removal of aircraft**

BAC is not liable for any loss or damage Airline suffers, including:

- (a) loss or damage to Airline's aircraft; and
- (b) claims against Airline by third parties,

directly or indirectly caused by BAC in moving or removing Airline's aircraft unless caused by BAC's negligence or the negligence of BAC's officers, employees, agents or contractors.

## **13. Use of Common User facilities**

- (a) Airline acknowledges that as at the Start Date, BAC has prepared and issued to Airline, the Terminal Operations Procedures.

- (b) Airline may only use the common user facilities provided by BAC to Airline from time to time in the passenger terminals, including aircraft parking bays/departure gates, check-in positions, common user terminal equipment (or CUTE), the BHS and flight information display systems (or FIDS) on the terms of the Terminal Operations Procedures.
- (c) Airline agrees to comply with the Terminal Operations Procedures at all times, as well as the reasonable directions of BAC's officers, employees, agents and contractors provided that they are acting in accordance with the Terminal Operations Procedures.
- (d) BAC may, from time to time, amend the Terminal Operations Procedures by giving Airline notice of the changes. Before doing so, BAC will consult with Airline at least 30 days before the changes come into effect.
- (e) This clause 13 is subject to clause 15, dealing specifically with Allocation Rules which form part of the Terminal Operations Procedures.

#### **14. Ground handling**

- (a) Airline may elect to contract the performance of apron handling services to an independent ground handling contractor approved by BAC from time to time in writing.
- (b) Airline is responsible for the services performed by any ground handling contractor engaged by Airline and must ensure the ground handling contractor performs services in accordance with the terms of the Apron Servicing Conditions.
- (c) If Airline elects to undertake apron handling services, Airline must then Airline must comply with the terms of the Apron Servicing Conditions.

#### **15. Brisbane Airport Allocation Rules**

##### **15.1 BAC may make and change Allocation Rules**

- (a) BAC may make Allocation Rules for the use of Aviation Services. As at the Start Date, the Allocation Rules are set out in BAC's Terminal Operations Procedures.
- (b) BAC may change the Allocation Rules at any time to take effect, subject to clause 15.2, on a date that BAC specifies.

##### **15.2 How BAC will change Allocation Rules**

- (a) If BAC wants to change the Allocation Rules, BAC will first consult with the affected Major Users.
- (b) Changes to the Allocation Rules will be posted on the Website at least 14 days before the changes come into effect.

##### **15.3 Compliance with Allocation Rules**

Airline agrees to comply with:

- (a) the Allocation Rules (as they are changed from time to time) at all times; and
- (b) the reasonable directions of BAC's officers, employees, agents and contractors provided that they are acting in accordance with the Allocation Rules.

## **16. IATA Schedule Co-ordinated Airport**

The International Terminal and the Domestic Terminal at Brisbane Airport are official IATA Schedule Co-ordinated Airport Terminals and as such airlines and aircraft operators should have an allocated slot through Airport Co-ordination Australia Pty Ltd (ACN 082 075 901) before Allocation Rules are applied.

## **17. Interruptions to Airport Services**

### **17.1 Unplanned interruptions and shutdowns**

BAC may close Brisbane Airport or any part of Brisbane Airport or interrupt or shutdown a service or facility at any time if required by law or if BAC believes it necessary to deal with an emergency or an airport security incident.

BAC will use BAC's reasonable endeavours to:

- (a) give Airline reasonable notice of a closure or interruption in these circumstances, but Airline recognises and acknowledges that in some circumstances this may not be possible; and
- (b) minimise the way Airline is affected by an unplanned closure or interruption.

### **17.2 Planned interruptions and shutdowns**

BAC may close Brisbane Airport or part of Brisbane Airport or interrupt or shutdown a service or facility at any time if BAC believes it necessary for repair or maintenance of BAC's facilities or because of some building or construction work occurring on Brisbane Airport. In such cases, BAC will:

- (a) consult with Major Users and provide a draft project plan for consideration and comment; and
- (b) comply with the project plan; and
- (c) give reasonable prior notice of such a closure or interruption; and
- (d) take reasonable steps to minimise the way Airline are affected by such a closure or interruption.

Airline can also find out when BAC plans to close Brisbane Airport or part of Brisbane Airport or interrupt or shutdown a service or a facility at Brisbane Airport, for repair, maintenance or construction work, by looking at the Website. BAC does not guarantee that the information contained on the Website is up to date, accurate or complete).

### **17.3 Liability for planned or unplanned interruptions and shutdowns**

BAC is not liable for any loss or damage Airline suffers, including:

- (a) loss or damage due to delays in aircraft movement; and
- (b) claims against Airline by third parties,

directly or indirectly caused by the planned or unplanned closure of Brisbane Airport or any part of Brisbane Airport or the planned or unplanned interruption or shutdown of a service or facility, unless caused or contributed to by BAC's reckless act or omission or the reckless act or omission of BAC's officers, employees, agents or contractors (and then only to the extent of such cause or contribution).

## **18. Information Airline must give BAC**

### **18.1 Airline must notify BAC of use of Brisbane Airport**

If Airline ceases to use the Aviation Services for a period of time and then proposes to re-commence that use, Airline must notify BAC in writing in accordance with:

- (a) this clause 18.1 ; and
- (b) clause 24,

prior to Airline using Brisbane Airport.

### **18.2 Provision of information generally**

Airline will provide BAC with the following information:

- (a) the information required in Part 1 of Schedule 2;
- (b) reasonable evidence that Airline has an approved transport security program that complies with BAC's security requirements and applicable laws;
- (c) reasonable evidence that Airline has emergency procedures that comply with Brisbane Airport Emergency Plan and safety requirements and applicable laws;
- (d) the names, addresses, telephone numbers, facsimile numbers and all other contact details for Airline's key personnel and Airline's designated Security Contact Officer and must provide updated information within 24 hours of any change (BAC must be able to contact Airline at any time during the day or night in respect of any emergency, security matters or operational matter with respect to Airline's use of Brisbane Airport);
- (e) if BAC requests information about any changes to aircraft emergency procedures, safety procedures or other operating procedures relating to any matter of safety, regularity, efficiency or economic concern to BAC, ASA, CASA or DIRDAC, then Airline will use reasonable endeavours to provide such information to BAC within a reasonable timeframe having regard to the nature of the request and any requirements of ASA, CASA or DIRDAC; and
- (f) if BAC requests information to facilitate reporting or calculations pursuant to Clause 4 of this Agreement, then Airline must use reasonable endeavours to provide such information to BAC within a reasonable timeframe having regard to the nature of the request.

### **18.3 Flight and Aircraft Information**

Airline must notify BAC of the information required in Part 2 of Schedule 2 within 24 hours of each flight to or from Brisbane Airport.

### **18.4 Monthly summary reports**

- (a) Within 5 Business Days after the end of each month, Airline agrees to provide to BAC a monthly summary (by flight) of the information provided to BAC under clause 18.3. Airline will provide this information to BAC in a format as reasonably required by BAC (which format may change from time to time). This information will be used to calculate Aviation Charges payable by Airline.

- (b) If Airline does not provide to BAC the monthly summary (by flight), then Airline agrees that BAC may make a reasonable estimate of Aviation Charges based on:
  - (i) information BAC obtains from Government departments and agencies (such as the Australian Customs Service);
  - (ii) the maximum number of passenger seats on the aircraft Airline operated during that month (which data will be based on information BAC has about Airline's aircraft);
  - (iii) the information Airline provided to BAC under clause 18.3; or
  - (iv) any other information available to BAC, which BAC deems to be relevant (acting reasonably).
- (c) BAC may verify the information provided by Airline pursuant to clause 18.4(a) having regard to information collected both from third parties (for example, the Australian Customs Service) and directly at Brisbane Airport (for example, by counting passengers embarking or disembarking aircraft operated by Airline).

## **19. Indemnities, Release and Insurance**

### **19.1 Airline indemnifies BAC**

Except to the extent of BAC's negligent act or omissions, and without limiting any other right or remedy BAC may have, Airline indemnifies BAC against:

- (a) any liability to or claim by a third party against BAC; and
- (b) all costs, penalties, losses and damages suffered or incurred by BAC,

arising out of or in connection with any wilful or negligent act or omission or breach of this Agreement by Airline or Airline's employees, agents or Airline's Affiliates.

### **19.2 Airline's Risk**

Airline uses Brisbane Airport at Airline's own risk.

### **19.3 Airline releases BAC**

To the extent permitted by law, BAC is not liable to Airline or any other person, whether under the law of contract, in tort (including negligence), for breach of statutory duty or otherwise:

- (a) for any Consequential Loss; and
- (b) for any injury, loss, damage, cost or expense relating to, arising from or in connection with Airline's use of Brisbane Airport pursuant to this Agreement, except to the extent that any such injury, loss, damage, cost or expense arises from BAC's wilful or negligent act or omission.

### **19.4 Survival of indemnities**

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement for whatever reason.

### **19.5 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

## **19.6 Evidence of Insurance**

- (a) Airline must produce evidence satisfactory to BAC that Airline holds the Minimum Insurance Requirements:
- (i) before the Start Date;
  - (ii) annually on the anniversary of the Start Date;
  - (iii) at the beginning of each period of insurance; and
  - (iv) whenever BAC asks, acting reasonably,

together with confirmation that the Minimum Insurance Requirements will remain current at all times Airline uses the facilities and services of Brisbane Airport.

For clarity, the evidence provided to BAC may be in the form of a certificate of insurance, provided such certificate describes the amount of cover and any exclusion, exemptions or other qualifications that would affect:

- (v) Airline's ability to make a claim for events which would ordinarily entitle an insured to make a claim; or
- (vi) the amounts Airline is able to recover from Airline's insurer,

under such insurance, as they relate to Airline's use of Brisbane Airport.

- (b) Airline must notify BAC as soon as practicable if an insurance policy required pursuant to clause 19.6(a) is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with Airline's use of Brisbane Airport.
- (c) BAC may require changes to the Minimum Insurance Requirements from time to time in accordance with current industry best practice and advice from BAC's insurers. BAC will provide Airline with 45 days prior notice of changes to the Minimum Insurance Requirements, following which, Airline must produce satisfactory evidence to BAC that Airline holds the Minimum Insurance Requirements (as varied) in accordance with clause 19.6(a).

## **20. Termination**

### **20.1 Failure to comply**

In addition to clause 9, if Airline fails to observe or perform any term, condition or obligation of this Agreement, BAC may:

- (a) give Airline at least 14 days' notice in writing requiring Airline to remedy such failure within a reasonable time; and
- (b) if Airline does not remedy the failure in accordance with clause 21.1(a), then clause 20.2 applies.

### **20.2 Termination for default**

In addition to clause 9, to the extent that BAC is permitted to do so by law:

- (a) if Airline is Insolvent;
- (b) if as a consequence of a legislative or regulatory requirement, including a lawful direction of any authorised statutory or

regulatory authority, BAC is required to deny or restrict Airline's access to Brisbane Airport;

- (c) if Airline fails to remedy any notified default in performance of Airline's obligations under this Agreement; or
- (d) if Airline fails to remedy any notified default in performance of Airline's obligations under the Aviation Services & Charges Agreement – Runway System,

then BAC may immediately terminate this Agreement and Airline's access to Brisbane Airport.

### **20.3 Where Airport lease terminates**

BAC may, by notice to Airline, terminate this Agreement (and any obligations BAC may have under this Agreement (other than those that survive as a consequence of a legislative requirement) will likewise terminate) in the event that BAC's lease of Brisbane Airport from the Commonwealth of Australia, is terminated for any reason.

### **20.4 Without prejudice**

The rights contained in this clause 20 are in addition to and without prejudice to any of other rights or remedies available to BAC whether at general law, under this Agreement or pursuant to the Aviation Services & Charges Agreement – Runway System (including accrued rights or remedies).

In addition, and without prejudice to any other rights, BAC may set-off or deduct from any amounts due to Airline under this Agreement, any moneys due from Airline to BAC under the Aviation Services & Charges Agreement – Runway System.

## **21. GST (Goods and Services Tax)**

### **21.1 Definitions**

- (a) Words and expressions which have a defined meaning in the GST law have the same meaning as in the GST law; and
- (b) "GST law" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

### **21.2 Consideration GST- Exclusive**

Despite the definition of consideration in the GST law, and unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### **21.3 Payment of GST**

If a party makes a taxable supply under or in connection with this Agreement, the other party must pay to the supplier at the same time, and in addition to the GST – exclusive consideration, an amount equal to the GST payable on that supply.

### **21.4 Tax Invoice**

The supplier must, as a precondition to the payment of GST under clause 21.3, give the other party a tax invoice.

## **21.5 Adjustments**

If an adjustment event arises in connection with a supply made under this Agreement, the supplier must give the other party an adjustment note in accordance with the GST law.

## **21.6 Reimbursements**

If this Agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

## **22. Confidential Information**

### **22.1 Acknowledgement**

Each party acknowledges that all Confidential Information of the other party is and will be the sole and exclusive property of that other party.

### **22.2 Obligation of confidentiality**

Each party undertakes to the other to keep confidential each other's Confidential Information. Both parties must use their best efforts to prevent third parties from gaining access to each other's Confidential Information, other than as permitted under this Agreement.

To this end, each party must not, without the other party's prior written consent:

- (a) disclose or in any way communicate to any other person all or any of the other party's Confidential Information except as permitted by this Agreement; or
- (b) permit unauthorised persons to have access to places where the other party's Confidential Information is displayed, reproduced or stored; or
- (c) make or assist any person to make any unauthorised use of the other party's Confidential Information, and must take all reasonable steps (including obtaining confidentiality undertakings from officers, employees, agents and contractors who have or may have access to the other party's Confidential Information) to ensure that the other party's Confidential Information is not disclosed to any other person by any of the officers, employees, agents or contractors of either party.

### **22.3 Permitted disclosure**

Subject to clause 22.4, either party may disclose the other party's Confidential Information to:

- (a) its employees, officers, agents and contractors in the course of their employment on a need to know basis; or
- (b) to its advisers in relation to its rights under this Agreement; or
- (c) in BAC's case, to third parties who require the information for the safe, secure and efficient operation and development of Brisbane Airport, provided BAC first procures that the third party is obliged to keep that information confidential and to government departments or agencies provided that BAC first takes reasonable endeavours to require that the Government agency or department keeps the information confidential.

Nothing in this Agreement prohibits the use or disclosure of any Confidential Information to the extent that:

- (d) the Confidential Information is lawfully in the possession of the recipient of the information through sources other than the party who disclosed the Confidential Information; or
- (e) it is required by law or a stock exchange; or
- (f) it is strictly and necessarily required in connection with legal proceedings relating to this Agreement; or
- (g) the Confidential Information is generally and publicly available other than as a result of a breach of confidence by the person receiving the information.

#### **22.4 Conditions of permitted disclosure to representatives**

Both parties must ensure that its employees, officers, contractors, agents and all other persons to whom the Confidential Information may be disclosed will be under and will comply with obligations similar to the obligations imposed on it under this clause 22.

#### **22.5 Notification of breach**

If either party's employees, officers contractors or agents breach the confidentiality obligations contained in this Agreement it must immediately notify the other party in writing of this.

#### **22.6 Damages and other remedies**

Each party acknowledges that a breach of this clause 2 may cause the other party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.

#### **22.7 Survival after expiry and termination**

The obligations under this clause 22 survive expiry and termination of this Agreement.

### **23. Dispute resolution**

#### **23.1 Procedure**

If either party considers that a dispute has arisen in connection with or under this Agreement ("**Issue**"), then the parties must follow the procedure set out in this clause 23 to resolve the Issue. In particular, the parties must, before commencing court proceedings, refer the Issue to the Dispute Committee in accordance with clause 23.2, and thereafter proceed in accordance with clauses 23.3 to 23.6.

#### **23.2 Referral to Dispute Committee**

If an Issue remains unresolved for 14 days, either party may refer the Issue to the Dispute Committee immediately or within such longer period as they may agree.

#### **23.3 Dispute Committee to meet**

The Dispute Committee must meet at least twice at BAC's offices (or such other place as the parties may agree) within 14 days of having the Issue referred to it under clause 23.2 to discuss the Issue in good faith with a view to resolving the Issue by agreement between the parties.

#### **23.4 Failure to agree**

If the Issue remains unresolved for 60 days after the Dispute Committee met (or should have met), or such longer period as the parties may agree, either party may refer the Issue to the Chief Executive Officers of the parties.

#### **23.5 Referral to CEOs**

The Chief Executive Officers or their nominee (“**CEOs**”) must, within 14 days of referral under clause 23.4, meet at BAC’s offices (or such other place as the parties may agree) and discuss the Issue in good faith with a view to resolving the Issue.

#### **23.6 Mediation**

If an Issue remains unresolved for 60 days after the CEOs have met (or should have met), then the parties agree that they may (in their absolute discretion) refer the Issue to mediation under the then current rules for mediation used by the Australian Commercial Disputes Centre in Brisbane, Australia. Unless otherwise agreed by the parties, the mediation will take place in Brisbane, Australia. Each party will bear their own legal and other costs and expenses of the mediation.

#### **23.7 Aviation Charges and Government Mandated Charges**

If the Issue relates to the data BAC has used to calculate Aviation Charges or Government Mandated Charges, BAC agrees that Airline does not have to pay the amount of any Aviation Charges or Government Mandated Charges that are the subject of a bona fide dispute unless and until the Issue is resolved in accordance with this clause. Airline otherwise agree to pay any amount of Aviation Charges or Government Mandated Charges that are not in dispute at the time specified for doing so under this Agreement.

#### **23.8 Legal proceedings**

Nothing in this clause 23 prevents either party from commencing legal proceedings for urgent interlocutory relief.

#### **23.9 Application**

Clauses 23.1 to 23.8 do not apply:

- (a) in respect of termination for default pursuant to clause 20.2; or
- (b) in circumstances where clause 9.3(b) applies; or
- (c) in the case of a dispute that is not bona fide.

### **24. Notices and Communications**

#### **24.1 Routine Correspondence**

A party may address routine correspondence to the other in accordance with Part A of Schedule 8 or to such other person or place as a party may give written notice to the other from time to time.

#### **24.2 Form of Notice**

Unless expressly stated otherwise in this Agreement, all Notices must be:

- (a) in writing;
- (b) signed or otherwise endorsed as official; and
- (c) approved by an authorised officer of the sender; and

- (d) sent to the place and person identified in respect of the recipient party in Part B of Schedule 8.

### **24.3 Delivery of Notice**

Notices must be:

- (a) delivered in person at the address recorded in Part B of Schedule 8; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address recorded in Part B of Schedule 8; or
- (c) where an email has been identified in Part B of Schedule 8, sent to that email address.

### **24.4 Change of Address for Notices**

Each party must, by Notice, update the contact information recorded in Part B of Schedule 8 as required from time to time if the contact information changes.

### **24.5 When effective**

- (a) Notices take effect from the time they are received unless a later time is specified.
- (b) If sent by post within Australia, Notices are taken to have been received five Business Days after posting.
- (c) If sent by post to or from Australia, Notices are taken to have been received seven Business Days after posting.
- (d) If sent by facsimile, Notices are taken to have been received at 5:00pm on the first Business Day following successful transmission by the sender.
- (e) If sent by email, Notices are taken to have been received:
  - (i) if sent before 2:00pm on a Business Day at the recipient's location, at 5:00pm on that day (unless a communication or transmission error or interruption occurs);
  - (ii) if sent after 2:00pm on a Business Day or on a day other than a Business Day at the recipient's location, at 9:00am on the first Business Day after that day (unless a communication or transmission error or interruption occurs)

## **25. Definitions and interpretation**

### **25.1 Definitions**

In this Agreement, the following words have the meanings below, except if the contrary is expressed:

**Agreement** means this Brisbane Airport Aviation Services and Charges Agreement – Terminals, Aprons & Related Infrastructure.

**Aircraft Related Services** means the provision, maintenance and repair of each of the following, as they relate to the Terminals, Aprons and Related Infrastructure:

- (a) terminal, airfield and airside lighting;
- (b) aircraft parking sites and facilities;
- (c) ground handling services and facilities (including equipment storage and refuelling);

- (d) aircraft refuelling services and facilities (including pipelines to and from the JUHI);
- (e) airside freight handling and long/short term staging areas essential for aircraft loading and unloading;
- (f) airfield navigation services and facilities (including visual navigation aids);
- (g) airside safety and security services (including rescue and fire-fighting services and perimeter fencing);
- (h) environmental hazard control services and facilities;
- (i) services and facilities to ensure compliance with environmental laws; and
- (j) aircraft light and emergency maintenance sites and buildings.

**Airline** means any of the following persons:

- (a) the person operating an aircraft;
- (b) the holder of the aircraft operators certificate for an aircraft; or
- (c) the registered owner of an aircraft,

that arrives at or departs from Brisbane Airport.

**Airline's Affiliates** means any related body corporate of the Airline, or any service provider engaged by the Airline in performing the Airline's business activities.

**Airservices Australia** means the Australian government-owned organisation known as such being the provider of Australia's air navigation services.

**Allocation Rules** means BAC's rules for the allocation of facilities provided by BAC. As at the Start Date, this includes the following facilities:

- (a) Counter Positions;
- (b) Baggage Handling System (or BHS);
- (c) Departure/Arrival Equipment (including bays/gates).

**Applicable Laws and Regulations** means any law or regulation imposed on Brisbane Airport or users of Brisbane Airport.

**Apron Servicing Conditions** means the conditions published by BAC (from time to time) under which Airline or ground handlers at Brisbane Airport operate anywhere on an apron, at the International Terminal or the Domestic Terminal. The Apron Servicing Conditions can be found on BAC's Website.

**ASIC** means Aviation Security Identification Card.

**Aviation Charges** means the charges payable by Airline which are determined from time to time under this Agreement (as set out in Schedule 3) which relate to the provision of Aviation Services by BAC.

**Aviation Services** means Aircraft Related Services and Passenger Related Services but excludes Excluded Aviation Services and General Airport Services.

**Aviation Services & Charges Agreement – Runway System** means the agreement between Airline and BAC for the use of the Runway System at Brisbane Airport.

**BAC's Affiliates** means any related body corporate of BAC, or any service provider engaged by BAC in performing BAC's business activities.

**Bank Account** means BAC's nominated bank account for the time being as notified by BAC to Airline from time to time in writing.

**BHS or Baggage Handling System** means the baggage handling system at the Domestic Terminal or the International Terminal from time to time, as the case may be.

**Bilateral Agreement** means any bilateral air services agreement between the Commonwealth of Australia and any other Nation State recognised by the Australian government as a Nation State which has been entered into under the auspices of the Convention on International Civil Aviation in order to operate international air services between Australia and the other Nation State. .

**Brisbane Airport** means Brisbane Airport and includes:

- (a) the Brisbane Airport Lease; and
- (b) any other land owned, developed, controlled or used in conjunction with the land leased from the Commonwealth of Australia which BAC manage and operate as:
  - (i) an airport; or
  - (ii) a parking area; or
  - (iii) a commercial or recreational undertaking associated with an airport or a parking area; and
- (c) the improvements on the Land and the other land including, without limitation, all plant and equipment, fixtures, fittings, furniture and furnishings (other than the property that belongs to others),

and where the context so requires includes any part of Brisbane Airport.

**Brisbane Airport Aerodrome Manual** means BAC's aerodrome manual setting out rules and procedures about the operation of aircraft at Brisbane Airport, which manual is prepared in accordance with the requirements of the Civil Aviation Safety Regulations 1998 and amended from time to time and published on the Website.

**Brisbane Airport Emergency Plan** means the document described as such and available from BAC upon request by Airline from time to time.

**Brisbane Airport Environment Strategy** the document described as such which forms part of the Brisbane Airport Master Plan.

**Brisbane Airport ICT policies** means any such policies available on the Website or as notified by BAC to Airline from time to time.

**Brisbane Airport Lease** means registered lease number 702599136 to BAC from the Commonwealth of Australia.

**Brisbane Airport Master Plan** means the airport master plan as approved by the relevant Minister under the *Airports Act 1996* (Cth) from time to time.

**Brisbane Airport Transport Security Programme** means BAC's security programme and measures in place from time to time for Brisbane Airport, which includes any security requirements imposed by DIRDAC or any other lawful authority for Brisbane Airport as notified to Airline from time to time.

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

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

**Confidential Information** means all Information relating to or developed in connection with or in support of either party's business disclosed or otherwise provided by one party to the other or otherwise obtained by either party which:

- (a) is not trivial in character; or
- (b) is not generally available to the public;
- (c) is provided by BAC pursuant to Schedule 19 and Schedule 6; or
- (d) is clearly marked as confidential.

**Consequential Loss** means any loss of revenue, time, goodwill, data, business, anticipated savings or opportunity, loss of production or loss of profits and any indirect, economic, special or consequential loss, damage, injury, claim, cost or expense.

**Counter Positions** means:

- (a) at the International Terminal, any common user check-in, service, domestic interline, transit/transfer, self-service bag drop, oversized baggage or departure gate counter position provided by BAC at the International Terminal (whether in existence on the Start Date or installed by BAC after the Start Date); or
- (b) at the Domestic Terminal, the common user check-in, service, self-service bag drop, oversized baggage or departure gate counter position provided by BAC at the Domestic Terminal (whether in existence on the Start Date or installed by BAC after the Start Date).

**Credit Application** means an application to BAC in the form set out in Schedule 5.

**Departure/Arrival Equipment** means :

- (a) for the International Terminal – the aerobridge and nose-in guidance equipment listed in BAC's Terminal Operations Procedures; and
- (b) for the Domestic Terminal – the aerobridge, non-aerobridge gates and bays and the nose-in guidance equipment.

**DIRDAC** means the Commonwealth Department of Infrastructure, Regional Development and Cities or any other Commonwealth department that has responsibility for the regulation of airports in Australia from time to time.

**Dispute Clause** means clause 23.

**Dispute Committee** means the committee established, from time to time, by Airline and BAC comprising two of Airline's senior executives and two of BAC's senior executives, or such other number as the parties agree.

**Domestic Terminal** means that part of Brisbane Airport primarily dedicated to airline and aircraft operations within Australia.

**Excluded Aviation Services** means:

- (a) Runway Services;

- (b) terminal navigation services; or
- (c) rescue and fire fighting services; or
- (d) en-route services; or
- (e) meteorological services; or
- (f) engineering services ; or
- (g) airside bussing;
- (h) aircraft towing;
- (i) aircraft fuelling; or
- (j) information and communication (**ICT**) services, such as wireless services and cable access.

**Expiry Date** means 30 June 2023.

**Financial Year** means each year starting on 1 July and ending on 30 June.

**General Airport Services** means those services and facilities that BAC provide to users of Brisbane Airport that are not Aviation Services or Government Mandated Services and include those services which are generally provided to airlines and aircraft operators at airports such as airline offices, passenger lounges, landside storage areas within terminal areas, staff car parking and leased sites and buildings for office, freight, aircraft maintenance, telecommunication and information technology services, catering and similar services.

**General Aviation Terminal** means the terminal located at 8 Casuarina Street, Brisbane Airport that is primarily dedicated to non-regular passenger transport airline and aircraft operations within Australia.

**Government Mandated Charges** means the charges payable by Airline which are determined from time to time under this Agreement (as set out in Schedule 4 which relate to the provision of Government Mandated Services by BAC.

**Government Mandated Costs** means the costs incurred by BAC for providing to Airline the Government Mandated Services.

**Government Mandated Services** means those services which BAC provides to Airline which are mandated by the Commonwealth Government (in applicable legislation and Ministerial or DIRDAC directions) or other lawful authority (including DIRDAC) which include, but are not limited to:

- (a) International Terminal passenger screening; and
- (b) International Terminal passenger checked bag screening; and
- (c) Domestic Terminal passenger checked bag screening; and
- (d) Domestic Terminal passenger screening; and
- (e) other services required by the Commonwealth Government or other lawful authority and any additional security measures BAC is required to take and which are provided by BAC to Airline at Brisbane Airport from time to time.

**GST** means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* and any other related imposition Acts of the Commonwealth.

**ICT** means information and communication technology.

**Index Number** means the All Groups CPI weighted average of eight capital cities as published by the Australian Bureau of Statistics published from time to time by the Australian Statistician. If the Australian Statistician updates the reference base of the Index Number, the Index Number will be appropriately adjusted so as to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician.

**Information** means all information regardless of its Material Form, relating to or developed in connection with:

- (a) the business, technology or other affairs of the provider of the Confidential Information; or
- (b) any systems, technology, ideas, concepts, know how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information owned or used by or licensed to the provider of the Confidential Information.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration, an externally-administered body corporate or insolvent (each as defined in the Corporations Act); or
- (b) it has had a controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by BAC); or
- (d) an application has been made and is not withdrawn or dismissed within 14 days, or an order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act* (or it makes a statement from which BAC reasonably deduce it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Interest Rate** means the rate per annum that is 2% higher than the rate charged by the Commonwealth Bank of Australia on overdraft accounts of more than \$100,000.

**International Terminal** means that part of Brisbane Airport primarily dedicated to airline and aircraft operations to and from Australia.

**Investment Strategy** means BAC's proposed investment strategy which particularises BAC's planned investments given forecast demand and with input from stakeholders.

**Land** means the land the subject of the Brisbane Airport Lease.

**Major Users** means any airline or aircraft operator that, at the relevant time, represents at least 10% of the total persons (excluding Infants, Operating Crew and Positioning Crew" but including "Transfers" and "Transits" as each of those terms are defined in Schedule 3) arriving or departing from the International or Domestic Terminal.

**Material Form** in relation to Information, includes any form (whether visible or not) of storage from which the Information can be reproduced and any form in which the Information is embodied or encoded.

**Minimum Insurance Requirements** means the requirements set out in Schedule 7.

**MTOW** means the maximum take-off weight certified for each aircraft operated by Airline at Brisbane Airport.

**Notices** means all notices, consents, approvals, waivers and other communications in connection with this Agreement other than routine correspondence.

**Passenger Related Services** means the provision, maintenance and repair of:

- (a) public areas in terminals, public amenities, lifts, escalators and moving walkways;
- (b) departure and holding lounges, and related facilities (excluding club/business lounges);
- (c) aprons and aerobridges (including nose-in guidance systems);
- (d) flight information and public address systems;
- (e) facilities to enable the processing of passengers through customs, immigration and quarantine;
- (f) check-in counters and related facilities (including associated queuing areas);
- (g) landside terminal access roads and facilities (including lighting and covered walkways);
- (h) security systems and services (including closed circuit surveillance systems); and
- (i) baggage make-up, handling and reclaim facilities.

**Published Peak Period** means the hours of 0600 – 1100 daily, as varied by BAC from time to time by at least 30 days prior written notice to Airline.

**Reasonable Return on Capital Cost** means the same return on capital cost used by BAC in determining the Aviation Charges.

**RDMS** means the Runway Demand Management System.

**Reporting Information Framework** means the framework described in Part 3 of Schedule 6.

**Review Date** means the day immediately after the Expiry Date and each subsequent anniversary of that date.

**Runway Services** means the services provided by BAC pursuant to the Aviation Services & Charges Agreement – Runway System.

**Runway System** means BAC's runways and taxiways (as available from time to time) used to provide the Aviation Services to Airline. To avoid doubt, this excludes any leased area.

**Start Date** means 1 January 2019.

**Term** means the term commencing on the Start Date and concluding on the Expiry Date.

**Terminals** means the Domestic Terminal, the International Terminal and the General Aviation Terminal collectively.

**Terminal Development Plan** means the plan described as such to be developed by BAC in respect of the redevelopment of the International Terminal and/or Domestic Terminal and the development of such infrastructure necessary to enhance aeronautical capacity at Brisbane Airport.

**Terminal Operations Procedures** means BAC's procedures about the allocation and use of common user facilities provided by BAC to Airline from time to time in the passenger terminals, including aircraft parking bays/departure gates, check-in positions, common user terminal equipment (or CUTE), the BHS and flight information display systems (or FIDS).

**Terminals, Aprons & Related Infrastructure** means BAC's passenger terminals, aircraft aprons and other infrastructure used to provide the Aviation Services to Airline. To avoid doubt, this excludes any leased areas, but includes roads and services related to those passenger terminals and aircraft aprons.

**Website** means BAC's worldwide web page at the URL [www.bne.com.au](http://www.bne.com.au).

## 25.2 Interpretation

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other gender; and
- (b) a reference to:
  - (i) a person includes a firm, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority; and
  - (ii) a person includes its legal personal representatives, successors and assigns; and
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
  - (iv) a right includes a benefit, remedy, discretion, authority or power; and
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation; and

- (vi) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms; and
- (vii) “\$”, “dollars” or “AUD” is a reference to the lawful currency of Australia; and
- (viii) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
- (ix) references to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, this Agreement; and
- (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
- (xi) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (xii) this Agreement is a reference to this Agreement including all clauses, parties, annexures, exhibits and schedules to this Agreement and as they are amended, varied or replaced from time to time; and
- (xiii) examples and/or use of the word “including” (and similar expressions) are not intended to be words of limitation.

### **25.3 Headings**

Headings do not affect the interpretation of this Agreement.

**Brisbane Airport Services and Charges  
Agreement – Terminals, Aprons & Related  
Infrastructure**  
Schedule 1 – Not used

# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure

## Schedule 2 – Information Required from Regular Users of Brisbane Airport (clause 18)

### PART 1

#### INFORMATION REQUIRED FROM REGULAR USERS (CLAUSE 18.2(a))

Date	
Operator	
ABN	
Address	
Telephone	
Fax (if applicable)	
Email	

Date of commencement of flight schedule	
Flight schedule	As per copy provided on ..... (insert date): <i>Airline must supply a copy of any new or amended Flight Schedule at least 30 days before the new or amended Flight Schedule is to take effect</i>
Ground Handling (please select one)	<input type="checkbox"/> Existing ground handler will be used <input type="checkbox"/> Will self-handle (after an Apron Servicing Licence is signed) <input type="checkbox"/> No ground handling required

Airline must also notify BAC of the following information (for all of Airline's aircraft using Brisbane Airport:

- (a) Airline; and
- (b) Aircraft type\*; and
- (c) Landed tonnes\*; and
- (d) Aircraft registration number\*; and
- (e) Maximum passenger capacity.

\*this information is currently supplied to BAC by Airservices Australia and will not be separately required from Airline unless this information ceases to be available from Airservices Australia in the future

**PART 2 (CLAUSE 18.3)**

Within 24 hours of each flight to or from Brisbane Airport:

- (a) aircraft registration number; and
- (b) flight number; and
- (c) origin\*\*; and
- (d) destination\*\*; and
- (e) date of flight; and
- (f) scheduled time of arrival at, or departure from, Brisbane Airport; and
- (g) block time (actual time) of arrival at, or departure from, Brisbane Airport; and
- (h) terminal gate number used; and
- (i) freight carried (tonnes); and
- (j) international flight passenger information in the format detailed in the table below (or such other format as BAC agrees with Airline):

INTERNATIONAL FLIGHT PASSENGER INFORMATION	NUMBER
Seating capacity of Aircraft	
Total passengers on the Aircraft (excluding Operating Crew)	
Deduct from total passengers on the Aircraft the number of:	
Positioning Crew	
Infants	
Transits (within the International Terminal)	
Transfers (within the International Terminal)	
<b>TOTAL PASSENGERS FOR AVIATION CHARGES PURPOSES</b>	
BAC also requests the following additional information in relation to the above amounts:	
Number of Domestic-on-Carriage Passengers (included in above amounts)	
Number of Transfers to/from domestic terminals (included in above amounts)	

Airline must also provide the information in this Part 2 at least 24 hours before each flight to or from Brisbane Airport (apart from the information in paragraphs (ii), (vii) and (viii).

\*\* it follows that either the origin or destination must be Brisbane Airport in all cases

# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure

## Schedule 3 – Aviation Charges

In this Schedule 3 and in clause 18, the following definitions apply:

- (a) **Domestic On-carriage Passenger** means a passenger flying between Brisbane and another Australian airport on a service with the ultimate origin/destination overseas. Passengers concerned embark and disembark at Australian airports through the international terminal.
- (b) **Domestic Passenger** means a person travelling on Airline's aircraft (excluding Infants, Operating Crew and Positioning Crew but including Transfers and Transits) arriving at or departing from the Domestic Terminal.
- (c) **Infant** means a person up to the age of 2 years who does not occupy his or her own seat on the aircraft.
- (d) **International Passenger** means a person travelling on Airline's aircraft (excluding Infants, Operating Crew, Positioning Crew, Transfers and Transits but including Domestic On-carriage Passengers) arriving at or departing from the International Terminal.
- (e) **Non Scheduled Air Service Landing** means an International or Domestic air service landing that is not scheduled e.g. non RPT positioning flights, diversions and training flights (as set out in Schedule 5).
- (f) **Operating Crew** means airline employees operating as flight or cabin crew on an arriving or departing aircraft at Brisbane Airport.
- (g) **Positioning Crew** means airline flight and cabin crew, other than Operating Crew, arriving into, or departing from, Brisbane Airport on company duty travel for the purposes of positioning for, or returning from, crewing duties.
- (h) **Transfers** means Transfer Passenger (Domestic) and Transfer Passenger (International).
- (i) **Transfer Passenger (Domestic)** means a Domestic Passenger whose origin and destination is an airport in Australia, other than Brisbane Airport, serviced by a different flight on the next possible connection, but excludes any overnight and up to 24 hour connections.
- (j) **Transfer Passenger (International)** means an International Passenger who arrives at Brisbane Airport by aircraft on one international flight and connects to, and departs Australia by, another international flight at Brisbane Airport and who is not processed by Australian immigration officials or the Australian Customs Service at Brisbane Airport.
- (k) **Transits** means a Domestic Passenger or an International Passenger whose origin and destination is an airport, other than Brisbane Airport, serviced by the same flight or flight code number.

## Aviation Charges

Type of Aviation Charge	Services	Basis for the Aviation Charge	01/01/19 - 30/06/19 ex GST	01/07/19 - 30/06/20 ex GST	01/07/20 - 30/06/21 ex GST	01/07/21 - 30/06/22 ex GST	01/07/22 - 30/06/23 ex GST
Passenger Service Charge - Domestic Terminal (including aerobridge)	For the use of the Domestic Terminal, aprons and associated infrastructure (including aerobridge)	Charged per arriving and per departing Domestic Passenger (subject to Peak Period Pricing set out in this Schedule 3)	\$7.56	\$7.63	\$7.77	\$7.82	\$8.11
Passenger Service Charge - Domestic Terminal (excluding aerobridge)	For the use of the Domestic Terminal, aprons and associated infrastructure (excluding aerobridge)	Charged per arriving and per departing Domestic Passenger (subject to Peak Period Pricing set out in this Schedule 3)	\$7.15	\$7.22	\$7.35	\$7.40	\$7.69
Passenger Service Charge - International Terminal	For the use of the International Terminal, aprons and associated infrastructure	Charged per arriving and per departing International Passenger	\$23.88	\$23.91	\$24.54	\$24.71	\$24.37
General Aviation, Freight, Diversions and Private Charter Fee	For the use of the aprons and associated infrastructure	Charged on a per landed tonne MTOW pro-rata per landing at Brisbane Airport	\$7.24	\$7.22	\$7.06	\$6.86	\$6.75

Passenger Service Charge - General Aviation Terminal	For the use of the General Aviation Terminal	Charged on a per MTOW pro-rata per arrival at and per departure from Brisbane Airport	\$14.35	\$14.71	\$15.08	\$15.45	\$15.84
Rotary Wing Aircraft Fee	For the use of the aprons and associated infrastructure	Charged on a per landed tonne MTOW pro-rata per landing at Brisbane Airport	\$4.34	\$4.33	\$4.23	\$4.12	\$4.05

Type of Aviation Charge	Services	Basis for the Aviation Charge	Aircraft Maximum Take-off Weight (MTOW)	01/07/18 - 31/12/18 ex GST	01/01/19 - 30/06/19 ex GST	01/07/19 - 30/06/20 ex GST	01/07/20 - 30/06/21 ex GST	01/07/21 - 30/06/22 ex GST	01/07/22 - 30/06/23 ex GST
<b>Aircraft Parking</b>	For use of any apron or parking area	Charged per 24 hours (or part thereof) of parking for all aircraft. However, there are no charges for the first two hours.	0 to 40,000kg	\$100.00	\$102.50	\$105.06	\$107.69	\$110.38	\$113.14
			40,001 to 100,000kg	\$146.30	\$149.96	\$153.71	\$157.55	\$161.49	\$165.53
			100,001 to 250,000kg	\$333.90	\$342.25	\$350.80	\$359.57	\$368.56	\$377.78
			250,001 to 400,000kg	\$485.70	\$497.84	\$510.29	\$523.05	\$536.12	\$549.52
			400,001kg +	\$643.50	\$659.59	\$676.08	\$692.98	\$710.30	\$728.06

# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure

## Schedule 4 – Government Mandated Charges

Type of Aviation Charge	Services	Basis for the Aviation Charge	01/01/19 - 30/06/19 ex GST	01/07/19 - 30/06/20 ex GST	01/07/20 - 30/06/21 ex GST	01/07/21 - 30/06/22 ex GST	01/07/22 - 30/06/23 ex GST
Domestic Terminal - Government Mandated Charges	For Domestic Terminal checked bag screening, Domestic Terminal passenger screening and other services required by the Commonwealth Government or other lawful authority and any additional security measures BAC is required to take and which are provided by BAC to Airline at Brisbane Airport from time to time.	Charged per arriving and per departing Domestic Passenger	For the period 01/01/19 – 30/06/19 – \$2.32	For the period 01/07/19 – 31/12/19 – \$2.47	For the period 01/07/20 – 31/12/20 – N/A	For the period 01/07/21 – 31/12/21 – \$0.11 (including S3 recovery)	For the period 01/07/22 – 31/12/22 – \$2.19 (including S3 recovery)
				For the period 01/01/20 – 30/06/20 – \$1.99 (excluding S3 recovery)	For the period 01/01/21 – 30/06/21 – \$3.78 (including S3 recovery)	For the period 01/01/22 – 30/06/22 – \$2.82 (including S3 recovery)	For the period 01/01/23 – 30/06/23 – TBA
International Terminal - Government Mandated Charges	For International Terminal checked bag screening, International Terminal passenger screening and other services required by the Commonwealth Government or other lawful authority and any additional security measures BAC is required to take and which are provided by BAC to	Charged per arriving and per departing International Passenger	For the period 01/01/19 – 30/06/19 – \$3.61	For the period 01/07/19 – 31/12/19 – \$3.30	For the period 01/07/20 – 31/12/20 – \$18.02 (including S3 recovery)	For the period 01/07/21 – 31/12/21 – \$18.00 (including S3 recovery)	For the period 01/07/22 – 31/12/22 – \$4.45 (including S3 recovery)
				For the period 01/01/20 – 30/06/20 – \$3.54 (excluding S3 recovery)	For the period 01/01/21 – 30/06/21 – \$27.53 (including S3 recovery)	For the period 01/01/22 – 31/03/22 – \$20.67 (including S3 recovery)	For the period 01/01/23 – 30/06/23 – TBA

	Airline at Brisbane Airport from time to time.					For the period 01/04/22 – 30/06/22 – \$15.06 (including S3 recovery)	
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# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure

## Schedule 5 – Credit Application (Clause 8)

**BRISBANE AIRPORT CORPORATION PTY LTD**

**APPLICATION FOR CREDIT**

TRADING NAME

--

BUSINESS NAME

TELEPHONE

	( )
--	-----

POSTAL ADDRESS

FAX

	( )
--	-----

**PROPRIETOR/S PARTICULARS**

**1. SOLE TRADER**

FULL NAME

DATE OF BIRTH

	/ /
--	-----

RESIDENTIAL ADDRESS

--

REGISTERED BUSINESS No.

DATE REGISTERED

TYPE OF BUSINESS

YEARS TRADING

--	--	--	--

BANK

BRANCH

--	--

**2. PARTNERSHIP (DETAILS OF ALL PARTNERS)**

FULL NAMES / PARTNERS

ADDRESS

DATE OF BIRTH

(i)		/ /
(ii)		/ /
(iii)		/ /
(iv)		/ /

REGISTERED BUSINESS No.

DATE REGISTERED

TYPE OF BUSINESS

YEARS TRADING

--	--	--	--

BANK

BRANCH

--	--

**3. LIMITED COMPANY**

NAME OF COMPANY	ACN	DATE OF INCORPORATION
		/ /

REGISTERED OFFICE ADDRESS

--

DETAILS OF ALL DIRECTORS

FULL NAMES / DIRECTORS	RESIDENTIAL ADDRESS	DATE OF BIRTH
(i)		/ /
(ii)		/ /
(iii)		/ /
(iv)		/ /

**TRADE REFERENCES**

NAME	TELEPHONE
(i)	( )
(ii)	( )
(iii)	( )

MINIMUM OF 3 TRADING ACCOUNTS

<b>PLEASE SIGN BELOW UPON COMPLETION</b>	<b>CREDIT LIMIT REQUIRED</b>	\$
--	----------------------------------	----

**SIGNED**

- |         |         |
|---------|---------|
| 1. .... | 2. .... |
| 3. .... | 4. .... |

**PRIVACY ACT ACKNOWLEDGEMENT AND CONSENTS**

1. Acknowledgement

The applicant(s) ("Operator") acknowledge(s) that Brisbane Airport Corporation Pty Ltd has informed me/us in accordance with the provisions of Part IIIA (Credit Reporting) of the *Privacy Act 1988* that certain items of personal information about me/us contained in this application or which may be subsequently obtained by Brisbane Airport Corporation Pty Ltd may be disclosed to a credit reporting agency. This information includes, among other things, particulars as to my/our identity, the fact an application for credit was made and the amount of credit sought, details of current providers of credit and details of any credit at least 60 days overdue, discharges, cheques twice dishonoured and serious credit infringements.

2. Applicant for credit's consents

The Operator consents:

- (a) to Brisbane Airport Corporation Pty Ltd obtaining from a credit reporting agency a credit report containing personal information about the Operator for the purpose of Brisbane Airport Corporation Pty Ltd:
  - (i) collecting overdue payments in respect of commercial credit provided to me/us (Privacy Act s 20F(1)); and
  - (ii) assessing my/our application for commercial credit on an on-going basis (Privacy Act s 20F(1)); or

- (iii) assessing my/our application for consumer credit (Privacy Act s 20F(1));
- (b) that Brisbane Airport Corporation Pty Ltd nominated trade insurer (if any) may obtain from a credit reporting agency a credit report containing personal information about me/us to assess the risk of providing insurance to Brisbane Airport Corporation Pty Ltd in relation to my/our application for commercial credit with Brisbane Airport Corporation Pty Ltd (Privacy Act s 20F(1)); and
- (c) that Brisbane Airport Corporation Pty Ltd may give to and seek from any credit provider named in this application for credit or in a credit report issued by a credit reporting agency information about my/our credit arrangements, including any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act (s 21G).

**Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure**

Schedule 6 – Not used

# Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure

## Schedule 7 – Minimum Insurance Requirements (Clause 19.6)

Airline must maintain at least the insurances set out below, each of which must also note:

- (a) BAC's interest; and
- (b) the interest of the Commonwealth of Australia

in respect of Airline's use of Brisbane Airport.

### Insurances

- (a) Liability insurance as provided for in the following table (whichever is applicable) or such higher level of insurance cover that a prudent airline or aircraft operator would ordinarily take out (as reasonably varied by BAC from time to time).

This liability insurance must be for a combined single limit for any one occurrence, covering passenger, baggage, cargo and third party liability insurance.

#### Fixed Wing Aircraft

Aircraft Classification	Minimum amount of liability insurance (for any one occurrence)
10,000 kg MTOW or less	US\$25,000,000
10,001kg – 28,000kg MTOW	US\$210,000,000
28,001kg – 100,000kg MTOW	US\$420,000,000
100,001kg – 170,000kg MTOW	US\$700,000,000
170,001 kg MTOW and above	US\$980,000,000

#### Helicopters

Aircraft Classification	Minimum amount of liability insurance (for any one occurrence)
Up to 2 passenger seats	US\$5,000,000
3 and 4 passenger seats	US\$10,000,000
More than 4 passenger seats	US\$15,000,000

- (b) Insurance covering any and all liability excluded or limited under clause 12.3 of this Agreement.

# **Brisbane Airport Services and Charges Agreement – Terminals, Aprons & Related Infrastructure**

## **Schedule 7– Notices (Clause 24)**

### **PART A – ROUTINE CORRESPONDENCE**

#### **Contact Information – BAC**

By Post: Chief Financial Officer  
Brisbane Airport Corporation Pty Limited  
11 The Circuit, Skygate  
BRISBANE AIRPORT QLD 4008  
AUSTRALIA

By email: Aero.Billing@bne.com.au

### **PART B – NOTICES**

#### **Contact Information – BAC**

By Post: Chief Financial Officer  
Brisbane Airport Corporation Pty Limited  
11 The Circuit, Skygate  
BRISBANE AIRPORT QLD 4008  
AUSTRALIA

**OR**

Chief Financial Officer  
Brisbane Airport Corporation Limited  
PO Box 61  
HAMILTON CENTRAL QLD 4007  
AUSTRALIA