

# Loan (Qantas Airways Limited)

No. 112 of 1967

An Act to approve the raising by way of Loan of Moneys in the Currency of the United States of America to be lent to Qantas Airways Limited, and for purposes connected therewith.

[Assented to 15 November 1967]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

- Short title.** 1. This Act may be cited as the *Loan (Qantas Airways Limited) Act* 1967.
- Commencement.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Definitions.** 3. In this Act—  
“Qantas” means Qantas Airways Limited;  
“the Agreement” means the agreement the execution of which is authorised by the next succeeding section.
- Approval of execution of Agreement.** 4. The execution on behalf of the Commonwealth of an agreement between the Commonwealth, The Boeing Company and Export-Import Bank of Washington, in accordance with the form in the Schedule to this Act, is approved.

5. The borrowing by the Commonwealth, in accordance with the Agreement, of moneys in the currency of the United States of America not exceeding in the whole Sixty-eight million seven hundred and forty thousand dollars is approved.

Approval of borrowing.

6. The execution on behalf of the Commonwealth, and the delivery, of promissory notes in accordance with the Agreement is approved.

Approval of notes.

7.—(1.) For the purpose of making available to Qantas moneys required by Qantas in connexion with expenditure by Qantas referred to in the Agreement, the Commonwealth may lend to Qantas, upon such terms and conditions as are determined by the Treasurer, amounts equivalent to the moneys borrowed under the Agreement.

Application of moneys.

(2.) Moneys required for the purpose of a loan under the last preceding sub-section are payable out of the Loan Fund, which is to the necessary extent appropriated accordingly.

8. The expenses of borrowing under the Agreement, and any commitment fee, interest or other charge payable under the Agreement, shall be paid out of the Consolidated Revenue Fund.

Expenses and charges.

9. Moneys borrowed under the Agreement shall be repaid out of the Consolidated Revenue Fund in accordance with the provisions of the Agreement.

Repayment of loan moneys.

10. The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of the last two preceding sections.

Appropriation of Consolidated Revenue Fund.

11. The *National Debt Sinking Fund Act* 1966–1967 does not apply in relation to moneys borrowed under the Agreement.

National Debt Sinking Fund Act not to apply.

12. Where the doing of any act or thing is, for the purposes of the Agreement, a disbursement by Export-Import Bank of Washington or by the Boeing Company but the act or thing is not, and does not entail, the payment of moneys by Export-Import Bank of Washington or by The Boeing Company to the Commonwealth, the doing of that act or thing shall, for the purposes of this Act, be deemed to constitute the borrowing by the Commonwealth, in accordance with the Agreement, of the amount of the disbursement and the lending by the Commonwealth to Qantas, for the purpose referred to in sub-section (1.) of section 7 of this Act, of an amount equivalent to that amount.

Application of Act to disbursements under Agreement not paid to the Commonwealth.

## THE SCHEDULE

## Section 4.

## CREDIT AGREEMENT

THIS CREDIT AGREEMENT, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 1967, by and between the Commonwealth of Australia (hereinafter called the "Borrower"), The Boeing Company (hereinafter called the "Exporter") and Export-Import Bank of Washington (hereinafter called "Eximbank");

## WITNESSETH:

WHEREAS, the Exporter is a corporation organized and existing under the laws of Delaware, United States of America, and is engaged in the manufacture of aircraft and Eximbank is an agency of the United States of America; and

WHEREAS, the Borrower owns all of the shares of Qantas Airways Limited (hereinafter called "Airline"), a corporation organized under the laws of the State of Queensland, Australia, and engaged in the operation of an international airline; and

WHEREAS, the Exporter and the Airline have entered into a Purchase Agreement dated August 23, 1966, relating to the purchase by the Airline from the Exporter of ten Boeing 707/338C jet aircraft (hereinafter called "Aircraft"), spare parts and related equipment and services, and the Airline has made or may make arrangements for the purchase from other United States suppliers of six spare engines, additional related spare parts, equipment and services (the Aircraft and all of said parts, equipment, and services are hereinafter called the "Equipment"); and

WHEREAS, the aggregate purchase price of the Equipment is anticipated to be approximately Eighty-Five Million Nine Hundred Twenty-Five Thousand United States Dollars (US\$85,925,000), and the Airline is prepared to make cash payments with respect to each item of the Equipment of not less than twenty per cent (20%) of the purchase price of such item, leaving the balance of the aggregate purchase price, that is to say, up to eighty per cent (80%) of the purchase price or approximately Sixty-Eight Million Seven Hundred Forty Thousand United States Dollars (US\$68,740,000) as the portion of the purchase price to be financed (hereinafter called the "Financed Portion"); and

WHEREAS, the Exporter is prepared to participate in the Financed Portion to the extent of ten per cent (10%) thereof or Six Million Eight Hundred Seventy-Four Thousand United States Dollars (US\$6,874,000), whichever is the lesser; and

WHEREAS, the Borrower and the Exporter have requested Eximbank to assist in financing the Financed Portion to the extent of ninety per cent (90%) thereof or Sixty-One Million Eight Hundred Sixty-Six Thousand United States Dollars (US\$61,866,000), whichever is the lesser; and

WHEREAS, the extension of credit for the aforesaid purpose will facilitate exports and imports and the exchange of commodities between the United States of America and Australia;

NOW, THEREFORE, In consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

## ARTICLE I

## ESTABLISHMENT AND AVAILABILITY OF CREDIT

A. *Establishment.* Eximbank and the Exporter hereby establish in favor of the Borrower a line of credit (hereinafter called the "Credit") upon the terms and conditions contained herein, in the amount of Sixty-Eight Million Seven Hundred Forty Thousand United States Dollars (US\$68,740,000) for the purpose of assisting the Borrower in financing the purchase by the Airline in the United States and exportation therefrom of the Equipment. Each disbursement under the Credit shall be made in the manner hereinafter set forth by Eximbank to the extent of ninety per cent (90%) of such disbursement and by the Exporter to the extent of ten per cent (10%) thereof. The aggregate of disbursements by Eximbank under the Credit shall not exceed Sixty-One Million Eight Hundred Sixty-Six Thousand United States Dollars (US\$61,866,000) and the aggregate of disbursements by the Exporter under the Credit shall not exceed Six Million Eight Hundred Seventy-Four Thousand United States Dollars (US\$6,874,000).

B. *Availability.* Disbursements under the Credit shall not be made subsequent to June 30, 1969, unless and to the extent that Eximbank and the Exporter may consent otherwise in writing (hereinafter referred to as the "Availability Date").

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## ARTICLE II

## PAYMENTS BY BORROWER

A. *Principal.* The Borrower covenants and agrees to repay the aggregate of all disbursements under the Credit to Eximbank as follows:

1. *Repayment at Maturity.* The Borrower shall repay to the order of Eximbank the aggregate of all disbursements under the Credit in fourteen (14) approximately equal installments, the first of which shall be due and payable on December 31, 1968, and the remaining thirteen (13) installments shall be due and payable successively semiannually thereafter; provided, however, in the event that the aggregate of the disbursements under the Credit shall be less than the principal amount of the Credit specified in Article I hereof, the Borrower shall, subject to the provisions of Paragraph B of Article III hereof, repay the aggregate amount of such disbursements in such amounts and on such installment dates as shall be specified in the promissory note or notes described in Paragraph A of Article III hereof.

2. *Repayment in Advance of Maturity.* The Borrower shall have the right, upon payment of all accrued charges for interest thereon, to repay at any time in advance of maturity, without premium or penalty, all or any part of the unpaid principal amount of the Credit at the time outstanding (and of any promissory note or notes evidencing such indebtedness); provided that, except as provided in subparagraph 2 of Paragraph B of Article III hereof, any such payments shall be applied to the outstanding installments of the principal of the Credit (and of such note or notes) in the inverse order of their maturity.

B. *Interest.* The Borrower covenants and agrees to pay interest on June 30 and December 31 of each year at the rate of six per cent (6%) per annum, computed on the basis of the actual number of days using a 365-day factor, on the unpaid principal amount of the Credit from time to time disbursed and outstanding; provided, that Eximbank shall have the right at any time after any disbursement under Article V hereof, to dispose of all or any part of its portion of any promissory note or notes evidencing the Borrower's indebtedness in respect of such disbursements, by sale, assignment, transfer, negotiation, or sale of participation, including the sale of participations in any Eximbank investment portfolio, and in such event the Borrower shall be obligated to pay interest at such a rate not exceeding seven per cent (7%) per annum on that portion so disposed of as, in Eximbank's judgment, is necessary to effect any such disposition. In the event that the rate of interest is increased above six per cent (6%) per annum, in consequence of the exercise by Eximbank of its rights under this Paragraph, the yield to Eximbank from said interest payments for the issuance by Eximbank of its guarantee, if any, with respect to the payment of the principal of and interest on the said promissory note or notes shall not exceed one-half of one per cent (1/2 of 1%) per annum; provided further, that in no event shall the rate of interest to be paid by the Borrower be less than six per cent (6%) per annum.

C. *Commitment Fee.* The Borrower shall pay to Eximbank on June 30 and December 31 of each year a commitment fee (hereinafter called "Commitment Fee") at the rate of one-half of one per cent (1/2 of 1%) per annum from April 22, 1967. The Commitment Fee shall be computed on the basis of the actual number of days, using a 365-day factor, on that portion of the Credit to be disbursed by Eximbank which is from time to time undisbursed, uncanceled or unexpired; provided, that with respect to disbursements made under Paragraph C of Article V such fee shall cease as of the date of payment by the commercial bank in question to the beneficiary of the letter of credit.

D. *Allocation of Payments.* All payments made by the Borrower under this Article shall be applied first, to the accrued commitment fee then due and payable; second to the accrued interest on the Credit and the promissory note or notes then due and payable; third, to the principal of the Credit and such note or notes then due and payable; and fourth and last, to any payments of such principal made in advance of maturity, as provided in this Article.

## ARTICLE III

## NOTES

A. *Promissory Notes.* The Borrower's obligations under this Agreement to Eximbank and the Exporter resulting from disbursements under the Credit shall be further evidenced by the Borrower's promissory note (hereinafter called "Note" or "Notes" as the context requires) payable to the order of Eximbank. It is understood and agreed that the Note shall be valid and enforceable only to the extent of disbursements made against such Note and

THE SCHEDULE—*continued*

interest on such disbursements. Although such Note shall be dated as of its date of issue and shall provide for interest from its date, appropriate adjustments will be made so that interest accrued and computed only from the dates of the respective disbursements made against such Note shall be payable. Such Note shall be payable in lawful money of the United States at a commercial bank in the United States satisfactory to Eximbank and shall be printed or lithographed in the English language on one side of a single sheet of safety paper. The text of such Note shall be substantially that of Exhibit "A" attached hereto.

B. *Exchange of Notes at Borrower's Request.* Upon the occurrence of the circumstances enumerated in subparagraphs 1 and 2 below and upon written request of the Borrower, Eximbank will apply ratably any excess principal amount of the Credit to the outstanding installments of principal of any Note or Notes evidencing such amounts. Provided, however, that if no such request is made by the Borrower within the period of time specified in the appropriate subparagraphs below, Eximbank will apply any excess principal amount of the Credit to the outstanding installments of principal of any Note or Notes evidencing such amount in the inverse order of their maturity. Concurrently with such request, the Borrower shall be entitled upon written request to exchange for each outstanding Note, a new Note in a principal amount equal to the aggregate of disbursements against, less the aggregate of any repayments of principal made upon, the Note or Notes surrendered, the amount of the outstanding semiannual installments to be reduced pro rata; such new Note shall be dated the date to which interest shall have been paid on the Note or Notes surrendered, and shall be substantially in the form of Exhibit "A" attached hereto, except for such modifications as may be necessary to give effect to any of the provisions of this Paragraph B. The circumstances pursuant to which the Borrower may make such request are:

1. When, on the Availability Date, the aggregate amount of disbursements under the Credit is less than the principal amount established under said Credit, and the request of the Borrower is received by Eximbank within thirty (30) days after the Availability Date; and

2. When the Airline elects to apply the proceeds of any Insurance (as defined in Article VII hereof) received by it subsequent to total loss or constructive total loss of any Aircraft, as repayment in advance of maturity pursuant to Paragraph 2 of Article VII hereof, and the request of the Borrower is received by Eximbank within sixty (60) days after any such loss.

As used in this Paragraph, the phrase "excess principal amount of the credit" shall mean either the amount by which the principal amount of the Credit specified in Paragraph A of Article I hereof exceeds the aggregate amount of disbursements under the Credit, or the amount of a payment in advance of maturity made pursuant to Paragraph 2 of Article VII hereof, or both, as the case may be.

C. *Exchange of Notes at Eximbank's Request.* Upon the request of Eximbank made at any time or from time to time, the Borrower shall issue and deliver to Eximbank, in exchange for any Note or Notes, theretofore issued to Eximbank pursuant to this Article, its new Note or Notes, in such denominations as Eximbank may specify and dated the date or respective dates to which interest shall have been paid on the Note or Notes surrendered. The aggregate principal amount of the new Note or Notes shall be equal to the aggregate of disbursements made against, less the aggregate of any repayments of principal made upon, the Note or Notes surrendered in exchange therefor. Each new Note issued pursuant hereto shall be substantially in the form of Exhibit "A" attached hereto, except for such modifications as may be necessary or appropriate to give effect to any of the provisions of this Paragraph C.

## ARTICLE IV

## CONDITIONS PRECEDENT TO UTILIZATION OF CREDIT

Prior and as a condition precedent to the first utilization of the Credit:

1. The Borrower shall submit or cause to be submitted to Eximbank and the Exporter, in form and substance satisfactory to both, the following:

(a) Evidence of the authority, together with the authenticated specimen signature, in duplicate, of each of the persons:

(1) who has signed this Agreement on behalf of the Borrower;

(2) who, on behalf of the Borrower has signed the Note delivered to Eximbank; and

THE SCHEDULE—*continued*

- (3) who will, until replaced by other persons duly authorized for the purpose, act as the representative of the Borrower for the purpose of signing documents and otherwise operating the Credit.
  - (b) An opinion or opinions of counsel, satisfactory to Eximbank and the Exporter which shall refer to all pertinent laws, decrees and documents and shall demonstrate to the satisfaction of both that:
    - (1) this Agreement as signed on behalf of the Borrower is legally binding upon the Borrower in accordance with its terms; and
    - (2) the Note delivered to Eximbank has been validly executed and will, to the extent of disbursements made under the Credit and the interest thereon, constitute the valid and binding obligations of the Borrower in accordance with its terms; and
  - (c) Such other opinions, documents and evidences, materials and information as Eximbank and the Exporter may reasonably request.
2. The Borrower shall submit or cause to be submitted to Eximbank:
- (a) A summary, or list broken down by principal categories, of the items of the Equipment which the Airline intends to purchase. Such summary or list, upon approval by Eximbank, shall constitute the Airline's purchase program for items to be financed under the Credit and no substantial changes shall be made therein without the consent of Eximbank and the Exporter; and
  - (b) The Note conforming to the provisions of this Agreement; and
  - (c) Conformed copies of all agreements relating to the Equipment between the Airline and the Exporter and between the Airline and other major suppliers; and
  - (d) A certificate in regard to commissions, fees or other payments as required by Paragraph G of Article IX hereof.
3. The Exporter shall submit to Eximbank, in form and substance satisfactory to Eximbank, the following:
- (a) Evidence of the authority, together with a certified specimen signature of each of the persons:
    - (1) who has signed this Agreement on behalf of the Exporter; and
    - (2) who will, until replaced by other persons duly authorized for the purpose, act as the representative of the Exporter for the purpose of signing documents and otherwise operating the Credit.
  - (b) An opinion of counsel demonstrating to the satisfaction of Eximbank that this Agreement, as signed on behalf of the Exporter, is legally binding on the Exporter in accordance with its terms.

## ARTICLE V

## DISBURSEMENT PROCEDURES

**A. Conditions Precedent.** When all conditions precedent to the first utilization of the Credit, as provided in Article IV hereof, have been fulfilled, the Credit may be utilized in accordance with any of the procedures set forth in this Article. These procedures, and the documents required in connection therewith, shall be more fully described in a procedure letter or letters (hereinafter collectively called "Procedure Letter") to be sent to the Borrower by Eximbank.

**B. Reimbursement.** Subject to the provisions of Paragraph A of this Article, disbursements will, upon the request of the Borrower, be made under the Credit from time to time to the account of the Borrower at a commercial bank in the United States designated by the Borrower and acceptable to Eximbank and the Exporter of amounts up to eighty per cent (80%) of the expenditures made by the Airline for the purchase of items of Equipment. Disbursements to the extent of ninety per cent (90%) of the Financed Portion of the purchase price of the items of Equipment covered by each request of the Borrower for an advance to enable it to reimburse the Airline shall be made by Eximbank, and disbursements to the extent of ten per cent (10%) of the Financed Portion of the purchase price shall be made or be deemed to have been made by the Exporter as provided below. Eximbank shall make disbursements as aforesaid upon the receipt in form and substance satisfactory to it (in addition to the documents required by the Procedure Letter) of evidence that the Exporter has issued its

## THE SCHEDULE—continued

irrevocable instructions to said commercial bank to debit the Exporter's account and credit the Borrower's account at such bank in the amount of ten per cent (10%) of the requested disbursement, or evidence of the extension of credit by the Exporter to the Borrower of an amount equivalent to ten per cent (10%) of the requested disbursement. Each such extension of credit shall constitute a disbursement under the Credit and shall bear interest from the date thereof.

C. *Letters of Credit.* The Borrower may use the Credit from time to time by requesting a commercial bank in the United States designated by the Borrower and acceptable to Eximbank and the Exporter to open or confirm letters of credit for the purpose of financing not more than eighty per cent (80%) of the expenditures to be made by the Airline for the purchase of items of Equipment furnished or to be furnished by suppliers other than the Exporter, and seventy-two per cent (72%) of the expenditures to be made by the Airline for the purchase of items of Equipment furnished or to be furnished by the Exporter. Eximbank will issue its undertaking to reimburse each such commercial bank to the extent of ninety per cent (90%) of disbursements made by the latter to the beneficiary of each such letter of credit if the beneficiary is other than the Exporter, and to the extent of one hundred per cent (100%) of said disbursements if the beneficiary is the Exporter. If the beneficiary is other than the Exporter, then the Exporter will issue its undertaking with respect to any such letter of credit to reimburse each such commercial bank to the extent of ten per cent (10%) of disbursements made by the latter to the beneficiary of each such letter of credit or the Exporter will issue its irrevocable instructions to the commercial bank to debit the Exporter's account at such bank, to reimburse such bank in amounts to equal ten per cent (10%) of said disbursements made by such bank in accordance with the terms of the letter of credit. If the beneficiary of the letter of credit is the Exporter, then it and the Borrower agree that simultaneously with each disbursement under said letter of credit a disbursement equal to one ninth (1/9th) of the amount of the disbursement under said letter of credit shall be deemed to have been made under the Credit by the Exporter, and the Exporter agrees that an amount equal to the amount of the disbursement deemed to have been made under the Credit shall be credited as a payment received by it from the Airline. Each such letter of credit shall expire by its terms not later than thirty (30) days prior to the Availability Date. In cases where an obligation rests upon the Exporter to issue its undertaking or irrevocable instructions as aforesaid, the obligation of Eximbank to issue its undertaking as aforesaid shall be deferred until it receives, in form and substance satisfactory to it (in addition to the documents required by the Procedure Letter), evidence that the Exporter has issued its undertaking or irrevocable instructions as aforesaid. It is agreed that so long as any undertaking by Eximbank and the Exporter as aforesaid remains in force it shall constitute a pre-emptive commitment of funds under the Credit in an amount equal to the principal amount of the letter of credit or the Financed Portion of the purchase price of the items of Equipment covered by the letter of credit, whichever amount is the greater; that payments made by Eximbank and the Exporter to commercial banks to reimburse such banks for disbursements made under letters of credit as aforesaid shall constitute disbursements under the Credit and shall bear interest from the dates on which such banks make disbursements to each beneficiary of a letter of credit; and, that Eximbank and the Exporter shall assume no liability for the acts or omissions of the commercial banks in opening or confirming such letters of credit or in making disbursements or payments thereunder or with respect thereto.

D. *Pre-delivery Payment.* If requested by the Borrower disbursements will be made under the Credit from time to time in conformity with the terms of this Agreement for the purpose of financing not more than eighty per cent (80%) of the pre-delivery payments due with respect to the purchase price of any Aircraft. If requested by the Borrower, ninety per cent (90%) of the amount of each such disbursement shall be made by Eximbank by a deposit on behalf of the Borrower to the account of the Exporter at a commercial bank in the United States designated by the Exporter and acceptable to Eximbank and the Borrower, and an amount equal to ten per cent (10%) of each such disbursement requested under this Paragraph D shall be deemed to have been made under the Credit by the Exporter (in respect of which the Airline's account with the Exporter shall be credited) as of the date of the disbursement by Eximbank as aforesaid.

E. *General.* Under any procedure for making disbursements under this Article, evidence shall be submitted that the Airline has made, prior to each disbursement by Eximbank and the Exporter under this Article or by a commercial bank under a letter of credit as described in Paragraph C of this Article, a cash payment of not less than twenty per cent (20%) of the amount then due with respect to the purchase of the item or items of Equipment in question.

THE SCHEDULE—*continued*

In addition to the documents required by the Procedure Letter and the foregoing provisions of this Article, the Borrower shall submit or cause to be submitted under any procedure for making disbursements under this Article such other documents and information as Eximbank may from time to time reasonably request. All documents and information submitted under this Article shall be satisfactory in form and substance to Eximbank.

## ARTICLE VI

## CANCELLATION AND SUSPENSION

A. *Cancellation by Borrower.* The Borrower may at any time by written notice to Eximbank and the Exporter cancel all or any part of the Credit which shall not have been disbursed.

B. *Suspension by Eximbank.* If an Event of Default, as defined in Article X hereof, shall occur and be continuing, then and in each and every such case, Eximbank and the Exporter shall consult with respect thereto and the obligations of Eximbank and the Exporter to make disbursements or extend credit hereunder shall be suspended upon written notice from Eximbank to the Borrower. Thereafter, Eximbank and the Exporter shall not be obligated to make further disbursements until they shall have received evidence that the cause or causes of the suspension have been eliminated or corrected in a manner satisfactory to Eximbank, and Eximbank shall have notified the Borrower in writing that the suspension has been removed.

C. *Continuation of Rights and Obligations.* Notwithstanding any cancellation or suspension pursuant to this Article, all the provisions of this Agreement and the Notes and the rights and obligations of any party with respect to disbursements made prior to such cancellation or suspension, shall continue in full force and effect. The Borrower shall continue to have the right, subject to the terms and conditions of this Agreement, to receive disbursements under the Credit with respect to payments falling due at any time prior to the final date for making disbursements as provided in Paragraph A of this Article under purchase orders that were binding on the Airline before receipt by the Borrower of written notice of intention to suspend the unused portion of the Credit and such suspension shall be without prejudice to the validity of outstanding undertakings issued pursuant to the provisions of Paragraph C of Article V hereof with respect to bank letters of credit.

## ARTICLE VII

## AIRCRAFT HULL INSURANCE

The Borrower covenants and agrees that so long as any of the Borrower's indebtedness remains outstanding and unpaid, and except to the extent that Eximbank and the Exporter may otherwise agree in writing, the Borrower shall either: (i) cause the Airline to maintain insurance upon the Aircraft under a contract of All-Risk Aircraft Hull Insurance, satisfactory to Eximbank and the Exporter; or (ii) make such alternative financial arrangements as it may consider to be appropriate; provided however, that such insurance or such financial arrangements (both of which, for the sake of convenience, shall hereinafter be called "Insurance") shall be payable in United States currency in the United States, in an aggregate amount not less than the lesser of the insurable value of the Aircraft or the outstanding amount of the Borrower's indebtedness. The terms of any such Insurance agreement, including deductible clauses, shall be in accordance with normal practices in the airline industry.

1. *Damage of Aircraft.* In the event of damage to any Aircraft, except total loss or constructive total loss, which damage is compensable under the Insurance referred to above, the Borrower shall promptly cause the Airline, upon receipt of the proceeds of such Insurance, to apply such proceeds to the repair of the Aircraft.

2. *Loss of Aircraft.* In the event of total loss or constructive total loss of any Aircraft, which total loss or constructive total loss is compensable under the Insurance referred to above, the Borrower shall promptly cause the Airline, upon receipt of the proceeds of the Insurance, at the Airline's option either (i) to apply such proceeds to the replacement of the Aircraft with a new aircraft of similar type manufactured in the United States, or (ii) to apply ratably as payment in advance of maturity as provided in Paragraph B of Article III hereof, so much of the proceeds as represents the minimum amount of Insurance required under this Agreement with respect to such Aircraft. Within sixty (60) days after such loss or constructive total loss, the Borrower shall advise Eximbank in writing which of the foregoing options the Airline has elected.

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## ARTICLE VIII

## REPORTS

Within one hundred eighty (180) days following the close of each fiscal year of the Airline until the indebtedness of the Borrower under the Credit shall have been paid in full, the Borrower shall submit or cause to be submitted, to Eximbank copies of the Airline's annual financial report, in form satisfactory to Eximbank, relating to the preceding fiscal year, including balance sheets, income statements and a description of operations during the year. Such annual report shall be certified by an independent auditor. Within ninety (90) days following the mid-point of each fiscal year, the Borrower shall submit or cause to be submitted, to Eximbank a summary of the monthly reports with respect to the preceding six (6) months of the Airline's fiscal year, which shall be signed by a responsible officer of the Airline but need not be certified by an independent auditor. The Borrower shall also cause to be furnished to Eximbank such additional reports and information as it may reasonably request.

## ARTICLE IX

## REPRESENTATIONS, WARRANTIES AND COVENANTS

A. *Authority.* The Borrower represents and warrants that it has full power, authority and legal right to incur the indebtedness and other obligations provided for in this Agreement and the Note, to execute and deliver this Agreement and the Note, and this Agreement does, and the Note when issued hereunder will, constitute valid and binding obligations of the Borrower in accordance with the respective terms hereof and thereof.

B. *Legal Action.* The Borrower represents and warrants that it has taken all action required under the laws and regulations of the Borrower, or of any political subdivision, department or agency thereof, to authorize the execution and delivery of this Agreement and the Note.

C. *Full Faith and Credit.* The Borrower represents and warrants that all covenants of the Borrower contained in this Agreement constitute, and the Note when issued hereunder will constitute, unconditional direct obligations of the Borrower for the payment and performance of which the Borrower pledges its full faith and credit.

D. *Past Employment.* The Borrower represents and warrants that no director, officer, employee, agent, attorney or consultant of the Borrower or the Airline who performed services in connection with the establishment by Eximbank of its credit hereunder was a director, officer or employee of Eximbank at any time during the period of one (1) year prior to March 23, 1967, the date on which the establishment of its credit was authorized by Eximbank.

E. *Future Employment.* The Borrower covenants that during the period of two (2) years after March 23, 1967, it will not employ or enter into any understanding to employ any person: (1) who was a director, officer or employee of Eximbank at any time during the period of one year prior to said date; or (2) who is a director, officer or employee of Eximbank at the time of such employment or understanding to employ, unless in either case such employment is approved in writing by Eximbank after full disclosure to it of all facts in connection therewith which it deems to be relevant.

F. *Payments.* The Borrower represents and warrants that it has not paid, agreed to pay, or caused to be paid, and covenants that it will not pay, agree to pay or cause to be paid to any person or other entity, except the Borrower's regular full-time officers and employees to the extent of their regular remuneration, any commission, fee or other payment in connection with the establishment or operation of Eximbank's credit hereunder, except reasonable compensation satisfactory to Eximbank for bona fide professional, technical or other comparable services incident to presenting the merits of the Borrower's application for Eximbank's credit hereunder or to the operation of such credit.

G. *Certification.* The Borrower covenants that it shall certify to Eximbank the name and address of each payee or intended payee of any such commission, fee or other payment, except amounts paid to the Borrower's regular full-time officers and employees as their regular remuneration, together with a statement of the services rendered or to be rendered, and the amount received or to be received by each; or, if such be the case, that there are no such payees or intended payees.

THE SCHEDULE—*continued*

## ARTICLE X

## EVENTS OF DEFAULT

If one or more of the following events (hereinafter called "Events of Default") shall have occurred and be continuing, that is to say:

1. A default shall have occurred in the payment of any amounts required under this Agreement, the Note, or any other agreement between Eximbank and the Borrower; or
2. A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under this Agreement, the Note, or any other agreement between Eximbank and the Borrower, and such default remains unremedied for a period of thirty (30) days after written notice thereof shall have been given to the Borrower by Eximbank; or
3. Any representation or warranty made by the Borrower under this Agreement, the Note, or any other agreement between Eximbank and the Borrower proves to be incorrect in any material respect and has not been corrected within thirty (30) days after written notice thereof shall have been given to the Borrower by Eximbank;

then, and in each and every such case, Eximbank may, upon written notice to the Borrower, make immediately due and payable the entire principal amount of the Credit at the time outstanding, or any Note evidencing such amount, together in each case with accrued interest thereon to the date of payment and any security which may exist with respect to such Credit or Note shall then become enforceable.

## ARTICLE XI

## EXPORTER AND EXIMBANK RIGHTS AND RELATIONSHIPS

A. *Eximbank and Exporter Participations.*

1. *Allocation of Disbursements.* The respective disbursements and extensions of credit by Eximbank and the Exporter pursuant to that portion of the Credit Agreement entitled "Disbursement Procedures" shall constitute disbursements under the Credit and be charged against their respective portions of the Credit as set forth in Article I of said Agreement.

2. *Payments.* Eximbank and the Exporter shall participate in the Borrower's indebtedness in proportion to the aggregate disbursements charged against their respective portions of the Credit, and Eximbank shall promptly remit to the account of the Exporter at a commercial bank in the United States designated by the Exporter and acceptable to Eximbank, the Exporter's proportionate share of the principal of and interest on the Borrower's indebtedness received by Eximbank.

3. *Equality.* The participations of Eximbank and the Exporter as aforesaid shall be *pari passu* in all respects and neither party shall enter into nor accept any arrangement (i) varying the terms of the Borrower's indebtedness, (ii) resulting in payment to either Eximbank or to the Exporter without ratable payment or transfer to the other, or (iii) securing either Eximbank or the Exporter without ratably securing the other.

4. *Expenses.* Any expenses incurred by Eximbank or the Exporter in the enforcement of the Borrower's indebtedness hereunder, if not reimbursed by the Borrower shall be borne by Eximbank and the Exporter in the proportion of their respective participations as described above.

5. *Participation Certificates.* Promptly after receipt of the written request of the Exporter made at any time after the Availability Date or the Cancellation of the undisbursed balance of the Credit or the date on which the Credit shall have been fully disbursed, whichever occurs first, Eximbank shall issue and deliver to the Exporter a duly executed certificate to evidence the Exporter's participation as described above.

B. *Disposition of Indebtedness.* Eximbank and the Exporter, or either of them, may at any time dispose of all or any part of their respective portions of the Borrower's indebtedness hereunder, or of the Note or Notes evidencing such indebtedness, by sale, assignment, transfer, negotiation, or sale of participation, including the sale of participations in any Eximbank investment portfolio; provided, that without the prior written consent of Eximbank, the Exporter shall not dispose of any part of its portion of any such indebtedness to other than (i) its wholly owned subsidiaries, or (ii) suppliers of items of Equipment furnished by other

THE SCHEDULE—*continued*

than the Exporter. No such disposition by Eximbank or the Exporter shall alter any of the rights or obligations of the Borrower under this Agreement except that:

1. The rate of interest payable on the unpaid portion of the Credit disbursed by Eximbank may be increased by Eximbank on the terms and conditions provided in Paragraph B of Article II hereof.

2. The right of the Borrower to make repayments of principal in advance of maturity on the unpaid portion of the Credit disbursed by Eximbank contained in subparagraph 2 of Paragraph A of Article II may be cancelled or modified in such manner as Eximbank, in its judgment, shall determine is necessary to effect any such disposition.

3. The Borrower shall, from time to time at the request of Eximbank, execute and deliver to Eximbank, or to such party or parties as Eximbank may designate, any and all further instruments and documents as may be necessary or advisable to give full force and effect to any such disposition, including therein, but not limited to, a new Note or Notes to be issued by the Borrower in exchange for any Note or Notes theretofore issued by the Borrower pursuant to the provisions of this Agreement.

Eximbank shall consult with the Borrower within a reasonable period of time prior to any such disposition which alters the rights or obligations of the Borrower as listed in subparagraphs 1 through 3 above.

## ARTICLE XII

## MARINE TRANSPORTATION AND INSURANCE

A. *Marine Transportation.* All items of Equipment, the purchase of which is to be financed in whole or in part under the Credit and which have been or shall be exported from the United States by ocean vessel, must have been or shall be transported from the United States in vessels of United States registry, as required by Public Resolution No. 17 of the 73rd Congress of the United States, except to the extent that a waiver of such requirement is obtained from the United States Maritime Administration. In the event that a waiver is obtained, the cost of ocean freight for shipments on vessels of other than United States registry shall not be eligible for financing hereunder.

B. *Insurance Premiums.* Premiums for insurance against marine and transit hazards on any items of Equipment financed under the Credit will be eligible to be financed under this Credit only with respect to those policies of insurance which are payable in United States dollars and are placed in the United States market.

## ARTICLE XIII

## PLACE AND FORM OF PAYMENTS

All payments by the Borrower (including, but not limited to, repayment of principal and payments of interest and Commitment Fee) shall be made to the order of Eximbank in United States currency at a commercial bank in the United States designated by the Borrower and acceptable to Eximbank.

## ARTICLE XIV

## TAXES

The Borrower covenants and agrees that the execution, issuance and delivery of this Agreement and the Note, and, except to the extent that the right to receive payment of the principal amount of or interest on any outstanding disbursements under the Credit or any Note is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or the Territory of Papua or the Territory of New Guinea, the payment of principal and interest under this Agreement and the Note, shall be exempt from all present and future taxes, duties, fees, restrictions, and other charges of whatsoever nature now or hereafter levied or imposed under the laws of the Borrower or laws in effect in its territories or by the Borrower or by any political subdivision, taxing authority, department, or agency thereof.

THE SCHEDULE—*continued*

## ARTICLE XV

## EXPENSES

All statements, reports, certificates, opinions and other documents or information furnished to Eximbank under this Agreement shall be supplied by the Borrower or the Airline without cost to Eximbank. Further, the Borrower hereby agrees to reimburse Eximbank and the Exporter on demand for all out-of-pocket costs and expenses incurred by Eximbank or the Exporter in connection with the enforcement, protection or preservation of any right or claim of Eximbank or the Exporter as against the Borrower in connection with this Agreement or the Note.

## ARTICLE XVI

## WAIVER

No failure or delay on the part of Eximbank or the Exporter to exercise any right, power, or privilege under this Agreement or the Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement or the Note preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

## ARTICLE XVII

## NOTICES

All notices and other communications hereunder shall be given in writing and shall be addressed to the appropriate party at the address set forth below, or at such other place as may be designated in writing by the respective parties hereto:

Commonwealth of Australia	The Boeing Company
The Secretary	Attention: Treasurer
Department of the Treasury	P.O. Box 3707
Canberra, A.C.T., 2600, Australia	Seattle, Washington 98124

Export-Import Bank of Washington  
811 Vermont Avenue, N.W.  
Washington, D.C. 20571

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in triplicate, at Washington, District of Columbia, United States of America, as of the date first above written.

COMMONWEALTH OF AUSTRALIA

THE BOEING COMPANY

By

By

Title

Title

ATTEST FOR

EXPORT-IMPORT BANK OF WASHINGTON

EXPORT-IMPORT BANK OF WASHINGTON

By

Secretary

Title

THE SCHEDULE—*continued*

EXHIBIT " A "

## PROMISSORY NOTE

## COMMONWEALTH OF AUSTRALIA

No.

Washington, D.C.

US\$68,740,000

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FOR VALUE RECEIVED, the Commonwealth of Australia, by this promissory note, hereby unconditionally promises to pay to the order of the Export-Import Bank of Washington, an agency of the United States of America, the principal sum of Sixty-Eight Million Seven Hundred Forty Thousand United States Dollars (US\$68,740,000), in installments as hereinafter provided and to pay interest in like currency on the unpaid principal balance hereof from time to time outstanding on June 30 and December 31 of each year commencing on the first of such dates next succeeding the date hereof, at the rate of six per cent (6%) per annum from date until the principal of this note is paid in full.

The principal of this note shall be payable in fourteen (14) installments, each of which shall be in the sum of Four Million Nine Hundred Ten Thousand United States Dollars (US\$4,910,000). The first such installment shall be due and payable on December 31, 1968, and the remaining installments shall be due and payable successively semiannually thereafter.

Payment of the principal of and interest on this note shall be made at the principal office of (*Name of United States Commercial Bank*) in the City of \_\_\_\_\_ State of \_\_\_\_\_, United States of America.

Both principal of and interest on this note shall be paid without deduction for or on account of, and shall be exempt from, all present and future taxes, duties, fees, restrictions or other charges of whatsoever nature now or any time hereafter levied or imposed under the laws of the Commonwealth of Australia or laws in effect in its territories or by the Commonwealth of Australia or by any political subdivision, taxing authority, department or agency thereof, except to the extent that this note is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or the Territory of Papua or the Territory of New Guinea.

The Commonwealth of Australia hereby reserves the right to prepay at any time and from time to time, without penalty or premium, all or any part of the principal of this note by payment of the principal amount so prepaid with interest thereon to the date of prepayment. Each such prepayment shall be applied to the remaining installments of principal on this note in the inverse order of their maturity.

This note is issued pursuant to the provisions of the Credit Agreement, dated \_\_\_\_\_, 1967, between the Commonwealth of Australia, The Boeing Company, and Export-Import Bank of Washington. Upon default in the prompt and full payment of any installment of principal or interest on this note or upon the occurrence of any of the other Events of Default set forth in said Credit Agreement, the entire principal of this note and interest thereon to the date of payment shall immediately become due and payable at the option and upon the demand of the holder hereof.

Except as provided in the immediately preceding paragraph hereof, the Commonwealth of Australia hereby waives diligence, presentment, demand, protest, notice of non-payment or dishonor, and/or any notice of any kind whatsoever with respect to this note.

This note and the covenants herein contained constitute unconditional direct obligations of the Commonwealth of Australia for the payment and performance of which the Commonwealth of Australia pledges its full faith and credit.

The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

COMMONWEALTH OF AUSTRALIA

By

Title