

LOAN (QANTAS EMPIRE AIRWAYS LIMITED).

No. 78 of 1960.

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 Empire Airways Limited, and for purposes connected therewith.

[Assented to 9th December, 1960.]

BE 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 Empire Airways Limited) Act 1960*.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Definitions.

3. In this Act—

“ the Loan Agreement ” means the agreement the execution of which is authorized by the next succeeding section, and includes the promissory notes delivered by the Commonwealth under that agreement;

“the Qantas Agreement” means the agreement between the Commonwealth and Qantas Empire Airways Limited referred to in Article II of the Loan Agreement.

4. The execution by or on behalf of the Commonwealth of an agreement between the Commonwealth, Boeing Airplane Company and Export-Import Bank of Washington, in accordance with the form in the Schedule to this Act, is approved. **Approval of execution of agreement.**

5. The borrowing by the Treasurer, on behalf of the Commonwealth, in accordance with the Loan Agreement, of moneys in the currency of the United States of America not exceeding in the whole Thirty million dollars is approved. **Approval of borrowing.**

6. The execution by or on behalf of the Commonwealth, and the delivery to Export-Import Bank of Washington, of promissory notes referred to in the Loan Agreement is approved. **Approval of notes.**

7.—(1.) The Treasurer shall, on behalf of the Commonwealth, in accordance with the Qantas Agreement, lend to Qantas Empire Airways Limited amounts equivalent to the moneys borrowed under the Loan Agreement. **Application of moneys.**

(2.) Where Qantas Empire Airways Limited has made expenditure on the basis of which any moneys are, subject to the conditions specified in the Loan Agreement, payable to the Commonwealth by way of loan under that agreement, the Treasurer may, pending receipt of those moneys by the Commonwealth, make, on behalf of the Commonwealth and on such terms and conditions as he thinks fit, advances of amounts not exceeding those moneys to Qantas Empire Airways Limited on account of the moneys that are to be lent under sub-section (1.) of this section.

(3.) The moneys required for the purposes of loans and advances under this section are payable out of the Loan Fund, which is to the necessary extent appropriated accordingly.

8. The expenses of borrowing, and interest and other charges payable, under the Loan Agreement shall be paid out of the Consolidated Revenue Fund. **Expenses and charges.**

9. Moneys borrowed under the Loan Agreement shall be repaid out of the Consolidated Revenue Fund in accordance with the provisions of the Loan 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 1923–1959* does not apply in relation to moneys borrowed under the Loan Agreement. **National Debt Sinking Fund Act not to apply.**

THE SCHEDULE.

Section 4.

AGREEMENT

This Agreement made and entered into this _____ day of _____, 19____, by and between the Commonwealth of Australia (hereinafter called "Commonwealth"), Boeing Airplane Company, Seattle, Washington (hereinafter called "Boeing") and Export-Import Bank of Washington (hereinafter called "Eximbank"), an agency of the United States of America.

WITNESSETH:

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

WHEREAS, Boeing is a corporation organised under the laws of the State of Delaware and is engaged in the United States in the manufacture of aircraft; and

WHEREAS, Qantas now owns seven (7) Boeing Model 707-138 aircraft; and

WHEREAS, pursuant to Modification Agreement No. 14 between Qantas and Boeing dated May 2, 1960 and the Agreement dated April 8, 1960 between Qantas and United Aircraft Export Corporation (hereinafter called "United") Qantas will undertake modification of such seven (7) Boeing 707-138 aircraft by purchasing and having installed in the planes "fan type" engines and related "retrofit kits" and pursuant to arrangements which Qantas has or will make with other United States suppliers Qantas will undertake other related purchases and conversions of equipment (hereinafter the foregoing program of purchases and conversions shall be called the "modification program"); and

WHEREAS, Qantas and Boeing have entered into a purchase agreement dated May 2, 1960, which is designated as Supplemental Agreement No. 5 to Purchase Agreement No. 14 dated September 24, 1956, and which covers the purchase from Boeing by Qantas of three (3) additional Boeing Model 707-138B aircraft and related spare parts; Qantas and United have entered into a contract dated April 5, 1960 for the purchase of spare engines and engine spare parts for the foregoing three (3) airplanes; and Qantas has made or will make arrangements with other United States suppliers for the purchase of other spare parts and ground handling equipment for these three (3) airplanes (hereinafter the program of acquisition relating to these three (3) airplanes and the modification program shall collectively be called the "program", the items to be purchased by Qantas under the program shall collectively be called "equipment" and Boeing or any of the other suppliers involved in the program shall sometimes be referred to as "supplier" and collectively as "suppliers"); and

WHEREAS, the aggregate contract price of the program (hereinafter called "contract price of the program") is expected to be approximately Thirty-Eight Million Eight Hundred Seventy-Seven Thousand Dollars (\$38,877,000); and

WHEREAS, the basic contract price of the foregoing three (3) airplanes is Fifteen Million Fifty-Five Thousand One Hundred Seventy-Six Dollars (\$15,055,176) and Qantas has agreed to pay with respect to such basic contract price prior to the delivery of said three (3) airplanes Four Million Nine Hundred Sixty-Eight Thousand Two Hundred Eight Dollars and Eight Cents (\$4,968,208.08) or approximately thirty-three per cent (33%) of such basic contract price; and

WHEREAS, the contract price of the "retrofit kits" to be purchased from Boeing is Five Million Nine Hundred Seventy-Eight Thousand Dollars (\$5,978,000) and Qantas has agreed to pay with respect to such contract price prior to installation of said "retrofit kits" One Million Nine Hundred Seventy-Two Thousand Seven Hundred Forty Dollars (\$1,972,740) or approximately thirty-three per cent (33%) of such contract price; and

WHEREAS, Boeing and Qantas have agreed that with respect to Two Million Seven Hundred Thirty-Four Thousand Three Hundred Twelve Dollars and Eighty-Eight Cents (\$2,734,312.88) of the aforesaid combined predelivery payments of Six Million Nine Hundred Forty Thousand Nine Hundred Forty-Eight Dollars and Eight Cents (\$6,940,948.08) the requirement for the said payments may be satisfied by Boeing extending credit to Commonwealth for fifteen per cent (15%) of said Two Million Seven Hundred

THE SCHEDULE—*continued.*

Thirty-Four Thousand Three Hundred Twelve Dollars and Eighty-Eight Cents (\$2,734,312.88) provided that Eximbank will extend credit for eighty-five per cent (85%) of said sum; and

WHEREAS, in addition to the predelivery payments of Four Million Two Hundred Six Thousand Six Hundred Thirty-Five Dollars and Twenty Cents (\$4,206,635.20) to be made with respect to the "retrofit kits" and the three (3) additional Boeing model 707-138B aircraft and not to be financed hereunder, Qantas has agreed to make other cash payments with respect to the contract price of the program; and

WHEREAS, the aggregate of the cash payments with respect to the contract price of the program will—

- (a) if the contract price of the program does not exceed Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000), amount to twenty per cent (20%) of such contract price; or
- (b) if the contract price of the program exceeds Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000), amount to so much of such contract price as exceeds Thirty Million Dollars (\$30,000,000); and

WHEREAS, so much of the contract price of the program as Qantas has not agreed to pay in cash (hereinafter called "the financed portion of the contract price of the program") remains to be financed; and

WHEREAS, Commonwealth has requested Eximbank to assist in financing the contract price of the program to the extent of eighty-five per cent (85%) of the financed portion of the contract price of the program but not exceeding in aggregate Twenty-Five Million Five Hundred Thousand Dollars (\$25,500,000); and

WHEREAS, Boeing has agreed to participate in the financing to the extent of the balance of the financed portion of the contract price of the program or not more than Four Million Five Hundred Thousand Dollars (\$4,500,000); and

WHEREAS, Commonwealth has requested that the foregoing financing be made available to it directly on the basis of the expenditures of Qantas under the program and Commonwealth will undertake to make corresponding financing available to Qantas; and

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

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

ARTICLE I

Establishment of Credit

A. Eximbank hereby establishes in favour of Commonwealth upon the terms and conditions herein set forth a credit of Twenty-Five Million Five Hundred Thousand Dollars (\$25,500,000) against which Eximbank acting independently or through the agency of one or more United States commercial banks will make advances to assist financing the contract price of purchase by Qantas from a supplier for exportation to Australia or to a depot elsewhere maintained by Qantas or by any airline with which Qantas has a working arrangement of any item of equipment to be acquired by Qantas under the program or to assist financing the contract price of performance by a supplier of any modification work included in the program, provided that the aggregate of such advances shall not exceed eighty-five per cent (85%) of the financed portion of the contract price of the program.

B. Boeing hereby agrees to extend credit in favour of Commonwealth upon the terms and conditions hereinafter set forth in an amount not to exceed Four Million Five Hundred Thousand Dollars (\$4,500,000) to assist financing the contract price of any item of the program, provided the aggregate of such financing shall not exceed fifteen per cent (15%) of the financed portion of the contract price of the program.

ARTICLE II

Submission of Contracts

A. Prior to any utilisation of credit hereunder Commonwealth shall submit to Eximbank for its approval (a) conformed copies of the contracts between Qantas and Boeing providing for the purchase of those items of the program to be furnished by Boeing, (b) conformed copies of the contracts between Qantas and United providing for the purchase of those items of the program to be furnished by the latter corporation,

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and (c) list of the other actual and prospective suppliers under the program and information as to descriptions and prices or estimated prices of the items to be supplied by them. The foregoing data shall set forth available information as to the terms and conditions of delivery or performance.

B. Prior to any utilisation of credit hereunder, Commonwealth shall furnish Eximbank a copy of an agreement between Commonwealth and Qantas certified by the Treasurer of the Commonwealth under which Commonwealth agrees to make available to Qantas financing in connection with the program which corresponds to credit made available to Commonwealth hereunder and which is upon substantially similar terms satisfactory to Eximbank.

ARTICLE III

Cash Payment

Qantas shall pay in cash from its own resources—

- (a) if the contract price of the program does not exceed Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000), twenty per cent (20%) of such contract price; or
- (b) if the contract price of the program exceeds Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000), so much of such contract price as exceeds Thirty Million Dollars (\$30,000,000).

Prior to any utilisation of credit hereunder Commonwealth shall present evidence to Eximbank that Qantas has made cash payments to Boeing with respect to the program equal to not less than Four Million Two Hundred Six Thousand Six Hundred Thirty-Five Dollars and Twenty Cents (\$4,206,635.20). Prior to each utilisation of credit hereunder, Commonwealth shall present evidence that Qantas has made a cash payment of not less than twenty per cent (20%) with respect to each item of the program being financed by each such utilisation of credit.

ARTICLE IV

Terms of Repayment—Promissory Note

Commonwealth hereby undertakes and agrees to repay the amount advanced by Eximbank hereunder and any amount owing to Boeing by reason of its extension of credit hereunder in fourteen (14) successive semi-annual installments commencing March 31, 1962, eight and six tenths per cent (8.6%) of the aggregate of such amounts to be paid in each of the first ten (10) installments and three and five tenths per cent (3.5%) of such amounts to be paid in each of the last four (4) installments. Commonwealth also undertakes and agrees to pay interest on the amounts from time to time outstanding at the rate of five and three-quarters per cent (5¾%) per annum payable on March 31 and September 30 of each year commencing on the first of these dates subsequent to the first advance and extension of credit, such interest to be computed on the basis of the actual number of days using a 365-day factor.

Commonwealth's obligation to Eximbank in connection with each advance hereunder and to Boeing in connection with each extension of credit by Boeing hereunder shall further be evidenced by a promissory note of Commonwealth in the principal amount of Thirty Million Dollars (\$30,000,000) issued to Eximbank prior to any advance and extension of credit. The promissory note of Commonwealth shall be payable to the order of Eximbank in fourteen (14) successive semi-annual installments, the first of which shall be due and payable on March 31, 1962, and shall bear interest at the rate of five and three-quarters per cent (5¾%) per annum on the unpaid balance thereof from time to time outstanding payable March 31 and September 30 of each year commencing on the first of these dates subsequent to the date of the note. Each of the first ten (10) installments of the note shall be equal to eight and six tenths per cent (8.6%) of the principal amount thereof and each of the last four (4) installments shall be equal to three and five tenths per cent (3.5%) of such principal amount.

The note shall be in the English language, shall be dated not later than its date of issue and shall be payable in lawful money of the United States at a commercial bank in the United States satisfactory to Eximbank. The note shall be printed or lithographed in form and substance satisfactory to Eximbank and substantially in the form of Exhibit "A" attached hereto.

Although the note shall bear interest from its date, appropriate adjustments will be made so that interest computed only from the dates of the respective advances and extensions of credit against the note shall be collected.

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If, on the date specified in or consented to in accordance with Article VII terminating the availability of credit hereunder for making advances and extensions of credit, the aggregate of such advances and extensions of credit on the note evidencing such advances and extensions of credit is less than the principal amount of such note, an exchange of notes will be made at the request of any party to this Agreement communicated to the other parties within thirty (30) days after the aforesaid date. Upon such request and within sixty (60) days after the aforesaid availability date, Commonwealth shall issue and deliver to Eximbank in exchange for the note then held by it evidencing advances by Eximbank and extensions of credit by Boeing hereunder another promissory note in the aggregate amount of such advances and extensions of credit. The new note given in exchange shall otherwise conform to the requirements of this Article IV. Commonwealth shall pay to Eximbank at the time of any exchange of notes, all interest which Eximbank is entitled to collect on the note surrendered to the date of the new note given in exchange. If a timely request for an exchange of notes is not made the excess principal amount on the note shall be credited in payment of the installments thereon in the inverse order of their maturities.

Prepayments on the indebtedness of Commonwealth hereunder and any note or notes evidencing such indebtedness may be made at any time but must be accompanied by payments of interest on the amount prepaid to the date of prepayment and will be applied to the satisfaction of installments in the inverse order of their maturities.

ARTICLE V

Advances—Reimbursement

When all conditions to the first utilisation of credit hereunder have been fulfilled, Eximbank will make disbursements to Commonwealth upon the request of Commonwealth supported by such details as Eximbank may require on the basis of expenditures previously made by Qantas on account of the contract price of any item of the program. Such disbursements may be made with respect to any predelivery payments to Boeing on account of any item of equipment purchased from Boeing under the program to the extent such payments exceed twenty per cent (20%) of the contract price of such item or with respect to eighty per cent (80%) of any payments made upon delivery or performance of any item of the program. Such disbursements shall not exceed in aggregate when added to disbursements under Article VA and to the total amount of letters of credit with respect to which Eximbank has issued its commitment pursuant to Article VI hereof, Thirty Million Dollars (\$30,000,000).

It shall be understood that each such disbursement shall constitute an advance by Eximbank against its credit herein established to the extent of eighty-five per cent (85%) of such disbursement and an extension of credit by Boeing hereunder to the extent of fifteen per cent (15%) of such disbursement, that each request by Commonwealth for each such disbursement shall constitute a request for an advance by Eximbank against its credit herein established and for an extension of credit by Boeing hereunder in the foregoing respective percentages and that Boeing gives Eximbank herewith its irrevocable consent to extending Boeing's credit hereunder to the extent of fifteen per cent (15%) of each such disbursement by Eximbank to Commonwealth. It shall also be understood that as a condition to each such disbursement Eximbank shall have received from Boeing fifteen per cent (15%) of the amount of such disbursement, said fifteen per cent (15%) representing the amount of credit to be extended by Boeing in connection with such disbursement.

Each such disbursement by Eximbank to Commonwealth shall be made upon receipt of the following in form and substance satisfactory to Eximbank:

- (a) The written request of Commonwealth for a disbursement in an amount equal to the expenditures shown in the itemized statement required by subparagraph (b) hereof and a request that such disbursement shall be constituted to the extent of eighty-five per cent (85%) thereof by an advance by Eximbank against its credit herein established and to the extent of fifteen per cent (15%) thereof by an extension of credit by Boeing hereunder.
- (b) An itemized statement of expenditures by Qantas describing the items of the program covered by such expenditures and not reported in any previous statement. If such expenditures are predelivery payments to Boeing such statement shall be accompanied by Boeing's invoice indicating the amount of predelivery payment already made and the amount due on presentation of such invoice. If such expenditures are payments made upon delivery of equipment or performance of modification work, the statement shall include

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the cost of such items, the date of order and payment, and the names and addresses of the suppliers of such items and shall be accompanied by copies of receipted invoices or other documentary evidence showing purchase or performance of modification work and showing payment on account of such purchase or performance. In the case of the purchase of an item of equipment acquired by Qantas under the program, except the three (3) additional Boeing 707-138B aircraft and any item delivered for installation under the modification program, such statement shall also be accompanied by non-negotiable copies of ocean bills of lading or other documentation evidencing either delivery to Qantas' maintenance base in the United States of such item or completed exportation of such item to Australia or to a depot elsewhere maintained by Qantas or by any airline with which Qantas has a working arrangement.

- (c) With respect to each item for which the expenditure was made upon delivery of equipment or performance of modification work, a certificate of Qantas stating that it has paid for such item listed in the itemized statement required by subparagraph (b) hereof, the exact amount set forth in said statement for such item and that such amounts take into account all discounts, allowances, rebates or other payments received or to be received in connection with the acquisition of said item (or in connection with the performance of a modification contract if the item involves modification work).
- (d) With respect to each item for which the expenditure was made upon delivery of equipment or performance of modification work, a certificate of each supplier of each such item listed in the itemized statement required by subparagraph (b) hereof that the item or items supplied by it are of United States manufacture or origin or are United States services and that it has not except as stated in said certificate granted or paid, agreed to grant or pay, or caused to be granted or paid to any person or other entity (except the supplier's regular full-time directors, officers and employees to the extent of their regular remuneration) any discount, allowance, rebate, commission, fee or other payment in connection with the sale of or for obtaining the contract to sell said item or items, if the item or items involve purchase of equipment or in connection with the performance of or for obtaining the contract to perform modification work, if the item or items involve such work.
- (e) Such additional documents and information relative to the foregoing as Eximbank may from time to time reasonably request.

ARTICLE VA

Advances—Predelivery Payments

When all conditions to the first utilization of credit hereunder have been fulfilled, Eximbank will pay to Boeing, at the request of Commonwealth and upon presentation by Commonwealth of an invoice from Boeing to Qantas indicating a predelivery payment due with respect to the aforementioned three (3) additional airplanes or the aforementioned "retrofit kits", eighty-five per cent (85%) of the value of such invoice. It shall be understood that each such payment shall constitute an advance by Eximbank against its credit herein established to the extent of eighty-five per cent (85%) of such invoice and an extension of credit by Boeing to the extent of fifteen per cent (15%) of such invoice, that each request by Commonwealth for such payment shall constitute a request for an advance by Eximbank against its credit herein established and for an extension of credit by Boeing hereunder in the foregoing respective percentages, and that Boeing gives Eximbank herewith its irrevocable consent to extending Boeing's credit hereunder to the extent of fifteen per cent (15%) of such invoice.

ARTICLE VI

Advances—Letters of Credit

A. When all conditions to the first utilization of credit hereunder have been fulfilled, Eximbank will issue, at the request of Commonwealth, its undertaking to reimburse funds to a United States commercial bank satisfactory to Eximbank and Boeing in connection with one or more letters of credit which are to be issued with the approval of Eximbank by said commercial bank in favor of Boeing and which are to provide for payment to Boeing, upon delivery by Boeing to Qantas of an item of equipment included in the program or upon completion by Boeing of any modification work included in the program, of an amount not to exceed eighty-five per cent (85%) of that portion of the contract price of said item which has not previously been paid in cash by Qantas or financed hereunder. It shall be understood that each cash drawing under such a letter

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of credit by Boeing to the extent of eighty-five per cent (85%) of that portion of the contract price of an item which has not previously been paid in cash by Qantas or financed hereunder shall constitute an advance by Eximbank against its credit hereunder and also an extension of credit by Boeing hereunder to the extent of fifteen per cent (15%) of such portion of the contract price and that such advance and extension of credit shall be charged against the note of Commonwealth hereunder.

B. When all conditions to the first utilization of credit hereunder have been fulfilled, Eximbank also will issue, at the request of Commonwealth, its undertaking to reimburse funds to a United States commercial bank satisfactory to Eximbank in connection with one or more letters of credit which are to be issued with the approval of Eximbank by said commercial bank in favor of United and which are to provide for payment to United upon each delivery by United to Qantas of an item of equipment included in the program of an amount not to exceed eighty-five per cent (85%) of that portion of the contract price of said item which has not previously been paid in cash by Qantas. Such letter of credit shall further provide that United has made arrangements with Boeing pursuant to which Boeing undertakes and United agrees that the remainder of the purchase price of the items included in said letter of credit be covered by extensions of credit by Boeing hereunder in consideration of a corresponding undertaking by United to Boeing to participate in Boeing's extensions of credit hereunder.

It shall be understood that each cash drawing under such a letter of credit by United to the extent of eighty-five per cent (85%) of that portion of the contract price of an item which has not previously been paid in cash by Qantas shall constitute an advance by Eximbank against its credit hereunder and also an extension of credit by Boeing hereunder to the extent of fifteen per cent (15%) of such portion and that such advance and extension of credit shall be charged against the note of Commonwealth hereunder. It shall also be understood (1) that each request by Commonwealth to Eximbank to issue its undertaking for such a letter of credit as aforesaid shall also constitute a request by Commonwealth to Boeing for an extension of credit to the extent of fifteen per cent (15%) of that portion of the contract price of an item under the program, for which cash drawings may be made under the letter of credit and (2) that Boeing gives Eximbank herewith its irrevocable consent to extending Boeing's credit hereunder as thus requested.

C. With respect to all letters of credit issued under A or B above it shall be understood (1) that each undertaking by Eximbank shall constitute a pre-emptive commitment of Eximbank's credit hereunder; (2) that interest on advances against Eximbank's credit hereunder and on the corresponding extensions of credit by Boeing hereunder will accrue from the dates of such advances and extensions of credit; and (3) that in making payments to the commercial bank pursuant to its undertaking, Eximbank shall in no way be liable for acts or omissions of said bank in connection with the issuance of, or payments to the beneficiary of, such letter of credit.

Eximbank will at the request of Commonwealth issue an undertaking as aforesaid upon receipt of the following in form and substance satisfactory to it:

- (a) A request signed by an authorised representative of Commonwealth identifying the item or items of the program the contract price of which is to be financed through the proposed letter of credit and authorising Eximbank to issue its undertaking with respect thereto. Such request shall be accompanied by a certificate signed by an authorised representative of Qantas certifying that Qantas has not received or agreed to receive any discount, allowance, rebate or other payment in connection with the acquisition of such item or items (or in connection with the performance of the modification contract, if the item or items involve modification work), except discounts, allowances, rebates or other payments, if any, as will be taken into account in the invoices presented in support of drawings under said letter of credit.
- (b) Three copies of the proposed letter of credit complete in all respects except as to date and signature and expiring by its terms not later than November 30, 1961, unless and to the extent Eximbank and Boeing shall consent jointly otherwise in writing. Each said letter of credit shall contain conditions satisfactory to Eximbank and Commonwealth among which shall be that the beneficiary thereof must submit to the issuing bank evidence that Qantas has made with respect to the item or items of the program covered by the letter of credit a cash down payment of not less than twenty per cent (20%) of the contract price thereof and (1) evidence that Qantas has received delivery of the respective item of the program (or if it involves modification work, that such work has been performed as contracted), and (2) a certificate of the beneficiary of the letter of credit with respect to each item of the program

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financed under the letter of credit certifying (i) that such item supplied by it is of United States manufacture or origin (or if it involves modification work, that such work was done in the United States) and (ii) that it has not, except as stated in said certificate, granted or paid, agreed to grant or pay, or caused to be granted or paid to any person or other entity (except the supplier's regular full-time directors, officers and employees to the extent of their regular remuneration) any discount, allowance, rebate, commission, fee or other payment in connection with the sale of, or for obtaining the contract to sell, said item (or in connection with the performance of or for obtaining the contract to perform the modification contract, if the item involves modification work).

(c) Such other documents relative to the foregoing as Eximbank may reasonably request.

ARTICLE VII

Availability of Credit

Advances shall not be made by Eximbank hereunder or credit extended by Boeing hereunder subsequent to December 31, 1961, unless and to the extent that in either case Eximbank and Boeing may give their joint written consent thereto.

ARTICLE VIII

Assignment of Indebtedness

It is understood and agreed that at any time Eximbank and Boeing may sell, transfer, negotiate, grant participations in or otherwise dispose of all or any portion of either the indebtedness of Commonwealth resulting hereunder or of any promissory note evidencing such indebtedness, provided that prior to any such disposition by either Eximbank or Boeing the party intending to make such disposition will give written notice to the other and to Commonwealth and that the rights of Commonwealth to adjustment of interest and to exchange of notes under Article IV and to the limitation of its liability under Article X are not prejudiced in any way.

ARTICLE IX

Exchange of Notes

Upon the request of Eximbank at any time or from time to time after the expiration of ninety (90) days from the date specified in or consented to in accordance with Article VII terminating the availability of credit, Commonwealth shall issue and deliver to Eximbank a new promissory note or notes in exchange for any promissory note or notes theretofore issued to Eximbank to evidence advances by Eximbank and extensions of credit by Boeing pursuant to this Agreement. The new promissory note or notes shall be dated so that no gain or loss of interest or acceleration or delay of interest payments will result. The aggregate principal amount of the new promissory note or notes issued at any time shall be equal to the aggregate of all outstanding advances against the note or notes surrendered in exchange therefor, and the new promissory note or notes shall be issued in such denomination as Eximbank may specify. If Eximbank shall so request, any new promissory note or notes issued pursuant hereto shall be so issued that all or any part of each installment of principal of any note surrendered or of all installments of principal of like maturity of any two or more notes surrendered shall be severally evidenced by such new promissory note or notes. The maturity date or dates of the principal, or installments of principal, of any such new promissory note shall be the same as the maturity date or dates of the unmatured installments of the note or notes surrendered in exchange therefor. Each new promissory note issued pursuant hereto shall conform to the requirements of Article IV of this Agreement and shall be substantially in the form of Exhibit "A" attached hereto except for such changes as may be appropriate to accomplish any of the purposes hereof.

ARTICLE X

Default

Upon default in the prompt and full payment of any installment of principal or interest due on the indebtedness of Commonwealth hereunder or any promissory note evidencing such indebtedness, Eximbank shall have the right to declare due and payable the entire principal of the indebtedness hereunder and any promissory note evidencing such indebtedness, together in each case with accrued interest thereon to the date of payment, upon notice delivered to Commonwealth and any security which may exist with respect to such indebtedness or promissory note shall upon such declaration become enforceable.

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In no event shall Eximbank be entitled to recover against Commonwealth more than the amount of Commonwealth's indebtedness hereunder even though such indebtedness is separately evidenced by this agreement and a note or notes issued hereunder.

ARTICLE XI

Equality of Indebtedness

Commonwealth, Boeing and Eximbank covenant that the terms of the indebtedness of Commonwealth in favor of Eximbank hereunder and any note or notes evidencing such indebtedness and the terms of the indebtedness of Commonwealth in favor of Boeing hereunder and any note or notes evidencing such indebtedness shall at all times be *pari passu* in all respects. Without in any way limiting the scope of the previous sentence, each covenants that it will not enter into any arrangement, without the consent of the others, (1) varying any of the terms of such indebtedness or any promissory note or notes evidencing it, (2) resulting in payment to one obligee, without rateable payment to the other, and (3) securing one obligee without rateably securing the other.

ARTICLE XII

Information to be Furnished

So long as any indebtedness of Commonwealth resulting hereunder including any promissory note evidencing such indebtedness remains unpaid, Commonwealth shall furnish to Eximbank or Boeing or both such reports and information relating to Commonwealth's financial condition and to the financial condition and operations of Qantas as Eximbank or Boeing may reasonably request.

ARTICLE XIII

Special Representations, Warranties and Covenants

(A) Commonwealth represents and warrants that no officer, employee, agent attorney or consultant of Commonwealth 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 year prior to June 9, 1960, (the date on which the establishment of its credit was authorised by Eximbank), and covenants that during the period of two years after said date it will not employ or enter into any understanding to employ any person who to the knowledge of Commonwealth (1) was a director, officer or employee of Eximbank at any time during the period of one year prior to said date or (2) 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.

(B) Commonwealth 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 Commonwealth's regular full-time officers and employees to the extent of their regular remuneration and counsel who may be consulted by the Commonwealth in connection with the operation of Eximbank's credit hereunder to the extent of their regular fees) any commission, fee or other payment in connection with the establishment or operation of Eximbank's credit hereunder.

ARTICLE XIV

Taxes

Commonwealth represents, warrants and agrees that the principal of the indebtedness hereunder and of any note issued hereunder evidencing such indebtedness and the interest on such indebtedness or note will be free of all present or future taxes imposed by Commonwealth or by any taxing authority thereof or therein except to the extent that the right to receive payment of the principal of the indebtedness hereunder or of any note issued hereunder evidencing such indebtedness or the interest on such indebtedness or note, as the case may be, is or comes to be beneficially owned by any person residing in or ordinarily a resident of Australia or of the Territory of Papua or of the Territory of New Guinea.

ARTICLE XV

Marine Transportation

Any item of equipment included in the program, the purchase of which is financed hereunder, if transported by ocean vessels to Australia shall be transported from the

THE SCHEDULE—*continued.*

United States in vessels of United States registry as required by Public Resolution No. 17 of the 73rd Congress of the United States of America, except to the extent that a waiver of such requirement is obtained as provided in such Public Resolution.

ARTICLE XVI

Priorities, Permits and Licenses

Eximbank and Boeing do not assume any obligation or responsibility for the issuance by any agency or department of the Government of the United States of any priority, allocation, permit or license which may be required under existing or future laws of the United States or any existing or future regulation of any agency or department of the United States which may be required to manufacture, produce, purchase, sell or export any item of equipment the purchase of which Commonwealth may wish to finance hereunder or which may be required to perform any modification work which Commonwealth may desire to finance hereunder.

ARTICLE XVII

Expenses

Commonwealth shall pay on demand reasonable out-of-pocket costs and expenses incurred by Eximbank or Boeing or both in connection with the operation of the credit and any costs and expenses, including legal fees, incurred by Eximbank or Boeing or both in connection with the enforcement of this Agreement or to effect the collection of any part of the principal or interest of the indebtedness resulting hereunder including any promissory note evidencing such indebtedness.

ARTICLE XVIII

Legal Opinions and Documents

- (a) As a condition precedent to the first utilization of the credit established hereunder, Commonwealth shall furnish to Eximbank and Boeing, in form and substance satisfactory to Eximbank and Boeing, the following:
- (1) Evidence of the authority (i) of the person or persons who have signed this Agreement on behalf of Commonwealth; (ii) of the person or persons who will sign the promissory notes on behalf of Commonwealth; and (iii) of the person or persons who will represent Commonwealth in connection with the signing of certificates and operations under this Agreement, together with the authenticated specimen signature, in duplicate, of each such person.
 - (2) An opinion or opinions of counsel satisfactory to Boeing and Eximbank which shall demonstrate to the satisfaction of Boeing and the General Counsel of Eximbank or counsel designated by him that (i) this Agreement as signed on behalf of Commonwealth is legally binding upon Commonwealth in accordance with its terms; and (ii) the promissory notes provided for hereunder when and as issued will constitute the valid and binding obligations of Commonwealth in accordance with their terms. Said opinions shall refer to all pertinent laws, decrees and documents.
- (b) Prior to any utilization of credit hereunder, Boeing shall furnish the following in form and substance satisfactory to Eximbank:
- (1) Evidence of the authority (i) of the person or persons who will sign this Agreement on behalf of Boeing; (ii) of the person or persons who will represent Boeing in connection with operations under this Agreement, together with the authenticated specimen signature, in duplicate, of each such person.
 - (2) An opinion or opinions of counsel satisfactory to Eximbank which shall demonstrate to the satisfaction of the General Counsel of Eximbank or counsel designated by him that this Agreement as signed on behalf of Boeing is legally binding upon Boeing in accordance with its terms.
- (c) Boeing and Commonwealth shall furnish Eximbank with such additional information, documents and opinions as Eximbank may from time to time reasonably request.

THE SCHEDULE—*continued.*

ARTICLE XIX

Communications

All communications required or permitted hereunder shall be addressed to the parties hereto at the addresses set forth below, and shall be effective, except as otherwise provided in this Agreement, when mailed:

The Export-Import Bank of Washington
Washington 25, D.C.
Commonwealth of Australia Embassy
Washington, D.C.
Boeing Airplane Company
Seattle 24, Washington.

EXHIBIT " A "

COMMONWEALTH OF AUSTRALIA

Promissory Note

Note No.....

U.S. \$....., 19 ..

FOR VALUE RECEIVED, the Commonwealth of Australia, by this promissory note hereby promises to pay to the order of

at the principal sum of Dollars (\$), in installments as hereinafter provided and to pay interest from the date hereof on and of each year on the unpaid balance hereof from time to time outstanding, computed at the rate of five and three-quarters per cent (5¾%) per annum, both principal and interest payable in lawful money of the United States of America.

The principal hereof shall be paid in fourteen (14) successive semi-annual installments, the first of which shall be in the sum of Dollars (\$), due and payable on , and the remaining thirteen (13) installments shall be due and payable successively semi-annually thereafter, the second through the tenth installments in the amount of Dollars (\$) respectively, the eleventh through the thirteenth in the amount of Dollars (\$) and the fourteenth installment in the amount of Dollars (\$). For the prompt payment of principal of and interest on this promissory note in accordance with its terms, the Commonwealth of Australia hereby pledges its full faith and credit.

Both principal and interest are payable in lawful money of the United States of America free of all present or future taxes imposed by the Commonwealth or by any taxing authority thereof or therein 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 of the Territory of Papua or of the Territory of New Guinea.

The right is reserved to prepay on any interest payment date all or any part of the principal of this promissory note, without penalty or premium, any such prepayment to be applied to the installments of principal in the inverse order of their maturity.

This note was issued pursuant to a credit agreement between Export-Import Bank of Washington, Boeing Airplane Company and the Commonwealth of Australia dated

Upon default in the prompt and full payment of any installment of principal of or interest on this promissory note or any other promissory notes issued pursuant to the aforesaid credit agreement, the entire unpaid principal of and interest on this note to the date of payment shall immediately become due and payable at the option and upon the demand of the holder hereof.

The failure of the holder to exercise any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any other instance.

COMMONWEALTH OF AUSTRALIA

By