

EMPIRE AIR SERVICE (ENGLAND AND AUSTRALIA).

No. 13 of 1938.

An Act to ratify and authorize certain Agreements relating to the Empire Air Service between England and Australia, and for other purposes.

[Assented to 1st July, 1938.]

- Preamble. **B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—
- Short title. **1.** This Act may be cited as the *Empire Air Service (England to Australia) Act 1938*.
- Commencement. **2.** This Act shall come into operation on the day on which it receives the Royal Assent.
- Approval of agreement in despatches between the United Kingdom and Commonwealth Governments. **3.** The agreement between His Majesty's Government in the United Kingdom and His Majesty's Government in the Commonwealth of Australia (as contained in the despatch and cablegram copies of which are set out in the First Schedule to this Act) is hereby ratified.
- Authorization of agreement between Qantas Empire Airways Limited and the Commonwealth of Australia. **4.** The execution, by or on behalf of the Commonwealth, of an agreement in the form set out in the Second Schedule to this Act is hereby authorized.
- Appropriation. **5.** There shall be payable, from time to time, out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, such amounts as are necessary for the purposes of the agreements referred to in sections three and four of this Act.

THE SCHEDULES.

FIRST SCHEDULE.

Section 3.

COPY OF DESPATCH FROM THE HIGH COMMISSIONER OF THE COMMONWEALTH IN
THE UNITED KINGDOM TO THE SECRETARY OF STATE FOR DOMINION AFFAIRS.

COMMONWEALTH OF AUSTRALIA.

Australia House, London, W.C.2,

22nd June, 1938.

MY DEAR SECRETARY OF STATE,

I have the honour to refer to previous correspondence regarding the question of participation by His Majesty's Government of the Commonwealth of Australia in the Empire Air Mail Scheme.

2. It would appear that the Government of the United Kingdom and the Government of the Commonwealth are now in agreement concerning the conditions of such participation, and it is thought that it would be useful for future reference if the details agreed upon could be set out in one document. I propose, therefore, to embody in this despatch the details of the Agreement as understood by the Commonwealth Government.

3. References in this despatch to "The Empire Air Mail Scheme" or "The Scheme" are intended to refer to a scheme for intercommunication by air between the United Kingdom and the various self-governing Dominions and Colonies, which has been carried into effect, in part, by the Agreements dated respectively 9th June, 1937, and 26th July, 1937, executed by the Secretary of State for Air on behalf of His Majesty, His Majesty's Postmaster-General in the United Kingdom and Imperial Airways Limited.

4. It is understood that the scheme insofar as it relates to the service between England and Australia will be carried into effect by joint co-operation both between the United Kingdom and Commonwealth Governments and between the two operating companies, namely, Imperial Airways Limited and Qantas Empire Airways Limited, and that provision will be made for such co-operation by the following Agreements:—

- (a) An Agreement between the Government of the United Kingdom and the Government of the Commonwealth, the particulars of which are set forth in this despatch;
- (b) An Agreement between the Government of the United Kingdom and Imperial Airways Limited covering the operations of that Company;
- (c) An Agreement between the Commonwealth Government and Qantas Empire Airways Limited, covering the operations of that Company; and
- (d) An Agreement between Imperial Airways Limited and Qantas Empire Airways Limited providing for the necessary co-operation between those two companies and in particular for an arrangement whereby the aircraft of both companies may fly along the whole of the route between England and Sydney.

5. The participation by the Commonwealth Government in the Scheme will be subject to the following conditions:—

- (a) The Commonwealth Government shall be entitled at any time and at all times to have all first class mail originating within Australia and its Territories for other countries participating in the Empire Air Mail Scheme together with air mails for non-participating countries carried over all the services included in the Scheme and the Commonwealth Government in its agreement with Qantas Empire Airways will require that contractor to carry over the Sydney-Singapore Section (which is hereinafter referred to as the Australian section) all first-class mail passing between the participating countries that would reasonably be routed over that section together with all air mails originating in one country and addressed to another country and reasonably routed over that section.
- (b) The Commonwealth Government will retain a surcharge system for the present in regard to outward air mail from Australia.

FIRST SCHEDULE—*continued.*

- (c) The Commonwealth Government shall have effective control over the Australian section and to that end will enter into an agreement with Qantas Empire Airways for the operation of the Australian section which will provide, *inter alia*,—
- (i) that the Commonwealth Government shall pay its subsidy and postal contributions under the Scheme as set out in paragraph 6 hereof direct to Qantas Empire Airways Limited any adjustment between Imperial Airways Limited and Qantas Empire Airways Limited being a matter for settlement between the two Companies direct;
 - (ii) that the Commonwealth Government shall have the right in the event of breach of agreement by Qantas Empire Airways Limited to withhold any such payments and/or to impose penalties or to cancel the agreement with the Company;
 - (iii) that the Australian section shall be staffed with Australian personnel;
 - (iv) that time-tables and stopping places for the Australian section and the fares and freight rates charged by Qantas Empire Airways shall be subject to the approval from time to time of the Commonwealth Government; and
 - (v) that Qantas Empire Airways Limited shall own and shall at all times have available for use and hold on the Sydney-Singapore section not less than six aircraft of approved type; Provided that if, in pursuance of an arrangement of the kind referred to above in paragraph 4 (d), any aircraft of that type belonging to Imperial Airways is at any time in use on the Sydney-Singapore section that aircraft shall be regarded as included in the number of aircraft held on the section at that time by Qantas Empire Airways Limited.
- (d) The withholding of any payments or the imposition of any penalties as contemplated by sub-paragraph (ii) of the last preceding paragraph shall not be regarded as constituting a reduction in the amount of the subsidy payments or postal contributions payable by the Commonwealth Government for the purposes of the Empire Air Mail Scheme;
- (e) No variation of the stopping places for the Australian section as originally fixed shall be made except after agreement between the Governments of the United Kingdom and of the Commonwealth;
- (f) In the event of the Commonwealth proposing any variations in the crews of aircraft operating on the Australian section such variations, if they materially affect the finance of the Empire Air Mail Scheme, shall not be made except after consultation with the Government of the United Kingdom. It is understood, however, that in no case will the crew be less than that required by Commonwealth law.
- (g) All aircraft engaged on the Australian section, whether owned by Qantas Empire Airways Limited or not, are to be regarded as subject to the conditions of the Agreement between the Commonwealth Government and Qantas Empire Airways Limited, and shall be under the control of the Commonwealth Government and, in case of actual or apprehended emergency, at the call of that Government. Conversely, it is agreed that all aircraft engaged on the United Kingdom-Singapore section, whether owned by Imperial Airways Limited or not, are to be regarded as subject to the conditions of the Agreement between the United Kingdom Government and Imperial Airways Limited and shall similarly come under the control of and be at the call of the United Kingdom Government.
- (h) In the event of flying boats proving unsatisfactory in performance over a reasonable period of time within the first two years of the operation of the Scheme, the position will be reviewed by the Advisory Board referred to below in Paragraph 11, and if the Scheme is found to be unsatisfactory in operation and incapable of suitable adjustment to the satisfaction of the Commonwealth Government, the Commonwealth Government may terminate its agreement with the United Kingdom Government.
- (i) There shall be a progressive reduction of the time schedule from England to Sydney down to an eventual schedule of $7\frac{1}{2}$ days.
- (j) Aircraft operating the Empire Air Mail service (which is hereinafter referred to as "the service") under the Scheme will not be charged housing or landing fees in Australian Territory, and any customs or other duty or

FIRST SCHEDULE—*continued.*

taxes collected in Australia on fuel and oil used by aircraft on flights in performance of the service (including trials and test flights for the purpose of the service) or upon equipment imported into Australia for the purpose of the service (not being equipment which, in the opinion of the Commonwealth Government, is being manufactured in and is commercially available in Australia) will be refunded. "Equipment" means aircraft, aircraft parts and spares; aircraft engines, aircraft engine parts and spares; aircraft and engine instruments and parts and spares for such instruments; and includes technical and workshop equipment of a specialized nature (i.e. not commonly used in other trades) required for the aircraft, the engines, the instruments or the workshops of the Company.

(k) The Commonwealth Government reserves the right to represent that major repair work and overhauls in connection with aircraft owned by Qantas Empire Airways Limited shall be carried out in Australia if such work is, in the opinion of the Commonwealth Government, within the capacity of the Australian aircraft industry at the time. If at any time upon representations by the Commonwealth Government it is accepted that the Commonwealth Government should come to an agreement with Qantas Empire Airways Limited that major repair work and overhauls shall thereafter be undertaken in Australia, and if any additional cost is incurred by Qantas Empire Airways Limited by reason of the carrying out in Australia, in pursuance of any such agreement, of such major repair work, and overhauls, the Commonwealth Government will pay the Company an amount to meet any such additional cost incurred at the request, and with the consent, of the Commonwealth Government, calculated upon such basis as shall have been previously agreed between the Commonwealth and Qantas Empire Airways Limited.

(l) Similarly, the Commonwealth Government reserves the right to represent that any new aircraft required by Qantas Empire Airways Limited for the purposes of the service shall be constructed either wholly or partly in Australia. If at any time upon representations by the Commonwealth Government it is accepted that the Commonwealth Government should come to an agreement with Qantas Empire Airways Limited that such construction shall thereafter be undertaken in Australia, the arrangements between the Commonwealth Government and Qantas Empire Airways Limited for such construction would be based broadly upon the following conditions:—

- (i) That such work is within the capacity of the Australian aircraft industry at the time;
- (ii) That the aircraft so manufactured in Australia shall be of the requisite standard of construction and uniform in type and performance with those manufactured in the United Kingdom for Imperial Airways Limited; and
- (iii) That if any additional cost is incurred by the Company by reason of such construction in Australia the Commonwealth Government will pay the Company an amount to meet any such additional cost incurred at the request, and with the consent, of the Commonwealth Government calculated upon such basis as shall have been previously agreed between the Commonwealth and Qantas Empire Airways Limited.

6. The financial arrangements between the Governments of the United Kingdom and the Commonwealth for the period of this Agreement will be as follows:—

(a) The Commonwealth Government will pay to Qantas Empire Airways Limited a minimum annual subsidy of £40,000 sterling. The subsidy payment will be increased by 8s. per pound for each pound of mails originating in Australia or its Territories carried in excess of 40,000 pounds per annum, but shall not exceed £50,000 sterling.

The Commonwealth Government will also pay to Qantas Empire Airways Limited 16s. sterling for the carriage of each pound of mail originating in Australia or its Territories but so that the annual amount so paid is not less than £32,000 sterling nor more than £52,000 sterling.

(b) For the purpose of ascertaining the total amount of the annual payments made by the Commonwealth under the last preceding sub-paragraph amounts withheld under paragraph 5 (c) (ii) above shall be regarded as having been paid.

FIRST SCHEDULE—*continued.*

- (c) The Commonwealth Government will not, without the consent of the Government of the United Kingdom, vary materially the existing general level of air postal rates for correspondence addressed to non-participating countries.
- (d) The frequency of the service to Australia shall be not less than three times weekly and if increased frequency of the service becomes necessary for the purpose of the carriage of mails no additional payment will thereby be required from the Commonwealth Government.
- (e) The ultimate total liability of the Commonwealth Government in respect of ground organization in the Australian section and the maintenance thereof shall not exceed the sum of £30,000 sterling per annum. This sum shall include and shall be applied in the first place towards amortization of capital expenditure. It shall also include amounts reimbursed by the Commonwealth Government to Qantas Empire Airways Limited under paragraph 9 (b) below.
- Capital and maintenance expenditure under this paragraph will be initially financed from Commonwealth funds and the United Kingdom Government will reimburse the Commonwealth Government any amount in excess of the said sum of £30,000 sterling per annum that may be expended by the Commonwealth Government pursuant to the arrangement outlined in paragraph 9 hereof.
- (f) The adjustments necessary to apportion the respective liability of the United Kingdom Government and of the Commonwealth Government under the last preceding paragraph shall be effected in the following manner:—
- (i) The actual initial capital expenditure and all capital expenditure during the first two years of the contract shall be determined and shall be fully amortized by equal annual amounts spread over the period of the contract.
 - (ii) All capital expenditure on agreed additional ground organization incurred after the first two years of the contract shall be fully amortized by equal annual amounts spread over the unexpired period of the contract.
 - (iii) In the event of any capital asset provided as part of the agreed schedule of ground organisation becoming valueless to the service or being superseded or abandoned before it has been fully amortized, it shall continue to be included for the purpose of determining annual amortization charges until such time as the capital cost less any amount realized on its disposal is liquidated.
 - (iv) If at the expiration of the period of the contract any capital asset has any residual value in connection with future aircraft services credit shall be given the United Kingdom Government for such proportion of the residual value as may be agreed upon by the two Governments.
 - (v) For the purpose of determining the respective liability of the two Governments (including amortization charges) interest shall not be charged or taken into account.
 - (vi) The cost of all maintenance expenditure including expenditure for replacement of capital assets and annual amortization charges will be determined annually and the excess over Australia's liability of £30,000 sterling will be reimbursed by the United Kingdom Government as soon as practicable after the amount of such excess is determined.
- (g) The Commonwealth Government will make no reduction in its subsidy payments to the Orient Line on account of the transference of mail to the air service, though it reserves the right to modify the existing arrangements on other grounds if and when it considers such a step to be necessary.

7. The Commonwealth Government in its agreement with Qantas Empire Airways Limited will follow the broad principles stated herein as the basis of the Commonwealth Government's participation in the Scheme, but reserves the right to impose such requirements upon Qantas Empire Airways Limited as are, in the Commonwealth Government's opinion, necessary to implement such broad principles. The Commonwealth Government considers those requirements to be essentially a matter between the Commonwealth Government and Qantas Empire Airways Limited, but an assurance is given that the Commonwealth Government will at no time attempt to

FIRST SCHEDULE—*continued.*

avoid any liability which, having regard to the broad principles of the arrangement between the two Governments, should fairly and equitably be borne by the Commonwealth Government.

8. The Commonwealth Government agrees to protect Qantas Empire Airways Limited against loss of unamortized capital due to any early termination of its existing contract for the Brisbane-Singapore air service.

9. As regards the provision of ground organisation the two Governments shall agree upon a detailed schedule of requirements in regard to the flying boat route on the Australian section and the following provisions shall apply:—

(a) *Within Australia:* The ground organisation responsibility of the two Governments shall extend to the provision of the requisite suitable aerodrome and landing areas equipped with all essential aids to navigation such as ground wireless direction finding, wireless beacons, meteorological services, airport and route lighting and with any necessary jetties and slipways, motor control boats equipped with searchlight apparatus and auxiliary launches, and mooring buoys for aircraft. Qantas Empire Airways Limited will be responsible for the provision and maintenance at its own expense of all ground facilities, equipment and personnel required for the handling and maintenance of aircraft and engines and for dealing with the passengers, mail and freight traffic including any hangars (other than at Rose Bay, Sydney), workshops, launches, pontoons and buildings required for those purposes.

The Commonwealth Government undertakes responsibility for such facilities within Australia in respect of Customs, Quarantine and Immigration as are considered necessary by the Commonwealth Government.

(b) *Through Netherlands East Indies:* The onus of securing facilities for the operation of the flying boat service through Netherlands East Indies will rest on Qantas Empire Airways Limited; but

- (i) the Commonwealth shall be at liberty to arrange for the supply of any items of ground organisation included in the agreed schedule;
- (ii) subject to paragraph 6(e), the Company shall be reimbursed by the Commonwealth Government any expenditure which is incurred with the previous approval of both Governments on items of the kind specified in sub-paragraph (a) of this paragraph as falling within the responsibility of the two Governments; and
- (iii) with respect to charges for landing and housing imposed by local authorities the Company shall be reimbursed or shall pay to the Commonwealth Government, as the case may be, the amount by which such charges exceed or fall short of a standard rate of 30s. sterling per landing, provided however that in the event of a charge not being imposed for any landing the Company shall pay to the Commonwealth the amount of 30s. sterling in respect of such landing.

The Commonwealth Government agrees to reimburse Qantas Empire Airways Limited the amount of duty paid by the Company in Netherlands East Indies on fuel and oil used by aircraft whilst operating the service.

(c) *At Singapore:* The Commonwealth Government shall be under no responsibility or liability whatever in respect of the provision of the necessary facilities at Singapore itself.

10. It is agreed that the Scheme should come into operation at the earliest possible date having regard to considerations of safety and the provision of the requisite facilities. Until the Scheme does come into operation the existing arrangements for the operation of the section between Singapore and Brisbane will continue. The Scheme will continue in operation for a period of 15 years from the date of its inception, subject to either Government being entitled to withdraw at any time if (after review by the Advisory Board referred to in paragraph 11 below) the Scheme is, in the opinion of that Government, unsatisfactory in operation and incapable of adjustment acceptable to that Government.

11. The working of the Scheme shall be supervised by an Advisory Board to be set up in London composed of representatives of the Governments of the Dominions and Colonies participating in the Scheme and of India and the Anglo-Egyptian Sudan.

12. The Commonwealth Government would be glad to learn as early as possible whether the United Kingdom Government confirms the foregoing statement as a correct formulation of the Inter-governmental agreement relating to the operation of the

FIRST SCHEDULE—*continued.*

Scheme, in which case, if the United Kingdom Government agrees, this despatch and your reply shall be regarded as constituting the agreement on the subject between the two Governments.

13. The Commonwealth Government desires to make it clear that neither its agreement with the United Kingdom Government nor the agreement between the Commonwealth and Qantas Empire Airways can have any force or effect until authorized or approved by the Commonwealth Parliament.

14. I desire to inform you that, in signing and presenting this despatch, I am acting on the instructions of the Commonwealth Government.

Yours sincerely,

S. M. BRUCE.

The Rt. Hon. Lord Stanley, M.C., M.P.,
Secretary of State for Dominion Affairs.

COPY OF CABLEGRAM RECEIVED BY THE PRIME MINISTER OF THE COMMONWEALTH OF AUSTRALIA FROM THE SECRETARY OF STATE FOR DOMINION AFFAIRS, LONDON, ON THE 23RD JUNE, 1938.

His Majesty's Government in the United Kingdom accept the terms of the despatch of the 22nd June, signed by the High Commissioner on your behalf, as recording the agreement between the two Governments on the subject of the participation of His Majesty's Government in the Commonwealth of Australia in the Empire Air Mail Scheme.

SECOND SCHEDULE.

Section 4.

FORM OF AGREEMENT BETWEEN QANTAS EMPIRE AIRWAYS LIMITED AND THE COMMONWEALTH OF AUSTRALIA.

THIS AGREEMENT made the _____ day of _____ One thousand nine hundred and thirty-eight BETWEEN QANTAS EMPIRE AIRWAYS LIMITED (in the operative portion of this Agreement called "the Contractor") of the one part and THE COMMONWEALTH OF AUSTRALIA (hereinafter called "the Commonwealth") of the other part:

WHEREAS an Agreement at present subsists between Qantas Empire Airways Limited and the Commonwealth for the operation and maintenance of an Aeroplane Service for the carriage of mails passengers and goods between Brisbane in the State of Queensland and Singapore in the Straits Settlements in each direction upon the terms and conditions stated in that Agreement (which is hereinafter referred to as the "original Agreement") and pursuant to such original Agreement such Aeroplane Service is to be operated and maintained until at least the ninth day of December One thousand nine hundred and thirty-nine:

AND WHEREAS the Government of the United Kingdom has proposed a Scheme for an Imperial Network of Air Services radiating from London, England to (*inter alia*) Africa, India and Australia, the portion of which network with which the Commonwealth is more particularly concerned being the Air Service to operate from England via India and Singapore and terminating at Sydney in the State of New South Wales, AND the Government of the United Kingdom has invited the various Dominions concerned to collaborate in such Scheme:

AND WHEREAS the Commonwealth for its part has expressed its willingness to join in such Scheme, the following principles (among others) as between the Governments of the United Kingdom and the Commonwealth being concurred in:—

- (a) Air Services contemplated by the Scheme shall provide for the transport of mails passengers and goods by means of aircraft of such type and operating with such frequency of schedule as shall enable transport of the mails passengers and goods to be effected at all times with regularity, efficiency and safety, but in no circumstances shall the frequency of schedule between Singapore and Sydney be less than thrice weekly in each direction;
- (b) There shall be contributed by the Commonwealth for the establishment operation and maintenance of the said Imperial Scheme of Air Services certain payments limited in amount as expressed hereunder in this Contract, but, excepting as to the financial payments required to be

SECOND SCHEDULE—*continued.*

made by the Commonwealth under paragraph (h) of this recital, it has been agreed that the balance of the monetary payments shall be made to a Contractor (as the Commonwealth's operating Contractor for the section and route between Singapore and Sydney) and not to the United Kingdom Government, such section and route of the said Imperial Scheme of Air Services between Singapore and Sydney being hereafter referred to as the "Australian section":

- (c) The Commonwealth is to have effective control and be responsible for the operation and maintenance of the Australian section of the Air Services, it being understood that, pursuant to the desire of the Government of the United Kingdom, aircraft operating on the remainder of the Imperial Scheme of Air Services may be brought through from Singapore on to the Australian section for the purposes of operating on the Australian section, and in exchange aircraft of the Contractor may be permitted to operate on the Imperial Air Network beyond Singapore;
- (d) The Government of the United Kingdom shall be responsible (whether or not it acts in collaboration with other Dominion Governments) for the establishment and operation of the remainder of the Imperial Air Network (i.e. other than the Australian section) and in particular shall be responsible for the establishment operation and maintenance of the England-Singapore Section of the England-India-Australia Service;
- (e) The England-India-Australia Section of the Imperial Air Network shall be operated and maintained for a period of fifteen years from the date of its commencement, provided however that either party shall be entitled to withdraw at any time from all participation in the Imperial Scheme and shall be freed from all liability relating thereto if the Scheme including the England-India-Australia portion thereof is found in the opinion of either party to be unsatisfactory in operation and incapable of adjustment acceptable to either party;
- (f) The England-India-Australia Service shall in accordance with the desire of the Government of the United Kingdom be commenced operated and maintained by means of flying boats of the type known as the "Short" "C" class but the Commonwealth shall have the right to withdraw (distinct from the rights mentioned in paragraph (e) above) from all participation in the Imperial Scheme including the England-India-Australia portion thereof if in the opinion of the Commonwealth Government the flying boat type of aircraft is unsatisfactory in performance over a reasonable period of time within the first two years of the operation of the Scheme and if the Scheme is found incapable of suitable adjustment to the satisfaction of the Commonwealth Government;
- (g) So far as the Australian section of the Imperial Scheme is concerned and as concerns the Commonwealth's responsibility for the operation of the Air Service on that section the Commonwealth shall make its own arrangements with a Contractor for the operation and maintenance of the Service on that section, and that Contractor, so far as concerns the establishment operation and/or maintenance of that section, shall be under the effective control of the Commonwealth under those arrangements;
- (h) The Governments of the United Kingdom and the Commonwealth shall agree upon a schedule of works for ground facilities and organization (within the Commonwealth and between Darwin and Singapore) on such financial terms as may be arranged between such Governments, and such ground facilities and organization shall be made available to the Contractor upon certain terms;
- (i) The Contractor shall be reimbursed all sums of money which he or it may have paid in respect of Customs or other duties or taxes imposed by the Commonwealth on—
 - (a) fuel and oil used by aircraft in flights on the Australian section of the Service; and
 - (b) certain equipment imported into Australia for the purposes of the Service;

AND WHEREAS the parties hereto are prepared to enter into this Contract terminating the original Agreement and providing for the establishment operation and maintenance of an Air Service on the Australian section upon and subject to the conditions herein appearing:

SECOND SCHEDULE—*continued.*

NOW IT IS WITNESSED by and between the parties hereto as follows :—

1. THIS AGREEMENT shall have no force or effect unless and until authorized or approved by the Parliament of the Commonwealth.

2. THE Contractor shall not be taken to have accepted or to be bound by the recitals hereinbefore contained so far as they relate to arrangements made between the Commonwealth and the Government of the United Kingdom.

3. THE Original Agreement now subsisting for the operation of the Brisbane-Singapore Service shall in consideration of these presents be terminated as on and from the date fixed under condition 8 of the Conditions of Contract contained in the Schedule to this Agreement as the commencement of the period of operation of the Service and as from and by reason of such termination each party shall release the other from all their or its respective obligations under such original Agreement but without prejudice to any rights accrued or accruing in favour of either party up to the actual date of termination, and provided that either—

- (a) an Air Service between Brisbane and Darwin shall be operated and maintained by the Contractor for the Commonwealth at a price and on conditions to be agreed for a period equal to the unexpired period of the original agreement, or for such longer period as may be agreed between the Commonwealth and the Contractor as a sufficient period to protect the Contractor against any loss of unamortized capital arising from such termination of the original Agreement prior to the date of its expiration; or
- (b) the Commonwealth will by some other means protect the Contractor against any such loss of unamortized capital so arising.

4. THE Contractor shall establish operate and maintain an Air Service for the Commonwealth between Singapore in the Straits Settlements and Sydney in the State of New South Wales for the consideration and pursuant and subject to the terms conditions obligations definitions provisions and all other matters and things contained specified or expressed in this Agreement or in the conditions specified in the Schedule hereunder written.

SCHEDULE OF CONDITIONS HEREINBEFORE REFERRED TO.

1. *Definitions for Purposes of this Contract.*—In these Conditions—

- “ Air mails ” means postal articles (other than parcels) upon which an air mail fee is payable in addition to the ordinary rate of postage;
- “ Air Navigation Act ” and “ Air Navigation Regulations ” respectively mean and include the *Air Navigation Act 1920-1936* and the Air Navigation Regulations thereunder with such amendments additions or modifications as are for the time being in force, and mean and include also any statutory modification thereof or substitution therefor;
- “ Civil Aviation Board ” means the Civil Aviation Board for the time being as constituted under the Air Navigation Regulations of the Commonwealth or any regulations in substitution therefor for the time being in force;
- “ Commonwealth ” means the Commonwealth of Australia;
- “ Connecting Aircraft ” includes any form of transport or other means by which mails passengers or goods may be brought to the Air Service;
- “ Contract Trip ” means a complete journey from Singapore to Sydney or from Sydney to Singapore required to be performed under and in accordance with the provisions of this Contract;
- “ Contract year ” means a calendar year calculated for each contract year from a date corresponding to the date of commencement as specified in Condition 8 of these Conditions of Contract;
- “ Controller-General of Civil Aviation ” means the Controller-General of Civil Aviation under the aforesaid Air Navigation Regulations or the officer for the time being (by whatever title known) performing the duties usually associated with the office of Controller-General;
- “ First Class Mails ” means mail matter transmitted at the rates applicable to letters and postcards;
- “ Minister ” means the Minister of State for Defence of the Commonwealth of Australia and includes any other Minister of State of the Commonwealth or any member of the Federal Executive Council for the time being acting for or on behalf of the said Minister of State for Defence and any Minister of State for the time being administering the Air Navigation Act and Regulations;

SECOND SCHEDULE—*continued.*

- “Landing Ground” includes any aerodrome or aircraft base or any place licensed under the Air Navigation Regulations or approved by the Minister for use by the particular type of aircraft then being used for the purposes of this Contract ;
- “Mails” means—
- (a) All first-class mails originating in one and addressed to another of the participating countries and all first-class mails for and from His Majesty's ships abroad, and
 - (b) All air mails originating in one country and addressed to another country ;
- “Non-Contract Trip” means a trip referred to in paragraph (b) of Condition 11 ;
- “Participating countries” means such countries as may from time to time be notified by the Minister by notice in writing to the Contractor as being countries participating in the Empire Air Mail Scheme ;
- “Postmaster-General” means the Postmaster-General of the Commonwealth of Australia and includes any other Minister of State of the Commonwealth or any member of the Federal Executive Council for the time being acting for or on behalf of the said Postmaster-General ;
- “Secretary, Department of Defence” means the Secretary for the time being of the Department of Defence of the Commonwealth of Australia, or the officer (by whatever title known) for the time being performing the duties usually associated with the office of Secretary, Department of Defence, so far as the Air Navigation Act and Regulations thereunder are concerned ;
- “Secretary of State for Air” includes any Minister of the Government of the United Kingdom who shall for the time being perform the duties associated with the present office of Secretary of State for Air ;
- “Stopping Place” means any place, area, aerodrome, aircraft base, locality or district—on sea or land—for the time being determined by the Minister to be a stopping place at or from which the Contractor shall alight and depart on each contract trip, (and also, where the context so requires, on each non-contract trip) : Provided that the same shall be appropriate to the type of aircraft, and be licensed or approved by the Minister for use by the type of aircraft, employed in the Service pursuant to this Contract.
- “the bond” means the bond executed in accordance with Condition 51 of these Conditions ;
- “the Contract” means this agreement ;
- “the Secretary, Civil Aviation Board” means the officer for the time being holding the office of Secretary, Civil Aviation Board, and includes any officer who is for the time being performing the duties of that office ;
- “the Service” or “the Air Service”, unless the contrary intention appears, means the Air Service between Sydney and Singapore to be carried out by the Contractor in accordance with these Conditions of Contract.

2. *Nature of Service.*—The Contractor shall as hereinafter provided operate and maintain at all times during the continuance of this Contract a service for the carriage by air of mails, passengers and goods along the route hereunder mentioned.

3. *Type of Aircraft to be used.*—The Service shall be established for its commencement by means of flying boats of the type known as the “Short” “C” Class type, and the Service shall be operated and maintained by means of that type, or such other type as the Minister shall have previously approved in writing, subject however to the provisions contained in the succeeding conditions :

Provided that the Contractor may use some other type in isolated cases of emergency as contemplated by Condition 20 hereof, but in that event the Minister may direct that such amount as he specifies shall be withheld from the payment to be made to the Contractor under Condition 35 in respect of any contract trip on which any such other type is used.

4. *Substitution of New Aircraft in Event of Discontinuance of Flying Boat Type.*—Should the Minister and the Secretary of State for Air of the United Kingdom jointly decide that aircraft of the flying boat type, after being used for Contract purposes over a reasonable period of time within the first two years of the Contract from the actual date of commencement of operation of the Australian section of the Service, are unsuitable for the purposes of this Contract the Minister on behalf of the Commonwealth may, either within such period of two years or within a reasonable

SECOND SCHEDULE—*continued.*

period thereafter (not exceeding twelve months), serve a notice on the Contractor stating that flying boats as a type are unsatisfactory to the Commonwealth for purposes of operation of the Service, and it shall then be obligatory upon the Contractor, within such time (not being less than six months) as shall be stated by the Minister in the said notice, to provide, in substitution for the flying boat type, either—

- (a) such other type and number of aircraft as are nominated by the Contractor and approved in writing by the Minister on behalf of the Commonwealth ;
or
- (b) in the event of the Contractor within three months of the aforesaid notice failing to nominate the type and number of aircraft approved as aforesaid by the Minister, such other type and number as are nominated by the Minister and the Secretary of State for Air of the United Kingdom within a further period of one month from the expiration of such three months period :

Provided that, if the Contractor is unwilling to agree with the Commonwealth upon such substitution in the manner above provided for, the Contractor may by notice to be given at any time within six months of the date of such nomination by the Minister and the Secretary of State for Air terminate this Contract without either party being liable to the other for damages and compensation by reason of such termination (but without prejudice to any rights accrued or accruing in favour of either party up to the date of such termination) and this Contract shall *ipso facto* terminate accordingly six months after receipt of the Contractor's said notice.

5. *Substitution of New Aircraft for Inefficient Aircraft.*—Whenever during the currency of the contract the Minister and the Secretary of State for Air of the United Kingdom are of the opinion that the aircraft then being used for the purposes of the Contract are not up to the standard required for the efficient operation of the Service, the Minister on behalf of the Commonwealth may request the Contractor to replace the aircraft so being used with other aircraft capable in the opinion of the Minister and Secretary of State for Air of efficiently operating the Service, and thereupon the Contractor shall at its own expense effect such replacements accordingly :

Provided that the Contractor shall have the right—if it so desires upon receiving notice from the Minister of such request—to terminate this contract by six months notice in writing if given within three months after service of the Minister's aforesaid notice.

6. *Route of Service.*—The route of the Service shall be between Sydney in the State of New South Wales and Singapore in the Straits Settlements by the shortest practicable route via the stopping places as provided for from time to time pursuant to the terms of Condition 7.

7. *Stopping Places.*—

- (a) Until otherwise determined by the Minister as provided hereunder the stopping places for the purpose of all contract trips shall be :—Singapore, Batavia, Sourabaya, Bima, Koepang, Darwin, Groote Eylandt, Karumba, Townsville, Gladstone, Brisbane, Sydney.
- (b) The Minister may at any time and from time to time increase or decrease the number of stopping places or substitute for any stopping place some other stopping place (suitable for the type of aircraft there employed) along or near the route of the Service, and every new or substituted stopping place shall be a stopping place for the purposes of the Contract in addition to or in lieu of other stopping places as the case may be :
- (c) The Contractor shall on each contract trip stop at each stopping place which is for the time being a stopping place within the meaning of the Contract :

Provided always that if, by reason of the exercise of the power vested in the Minister, any terminal point or stopping place or site used in connexion therewith permanently ceases to be a terminal point or stopping place, or any overnight stopping place ceases to be an overnight stopping place, the Commonwealth shall, unless the change has been effected at the request of the Contractor, indemnify the Contractor in respect of any loss sustained by the Contractor in respect of such equipment and facilities (if any) required for the proper handling and maintenance of the aircraft and engines employed on the Service as have been provided by the Contractor in respect of such point or place or site, and in respect of any passenger facilities provided by the Contractor at such point or place or site.

SECOND SCHEDULE—*continued.*

8. *Period of Operation of Service.*—The Service shall be operated and maintained for a period of fifteen years commencing on the third day of August, One thousand nine hundred and thirty-eight.

9. *Frequency of Service.*—(i) It is the essence of the contract and obligatory upon the Contractor that the Service shall at all times throughout the currency of the Contract be operated by the Contractor with such frequency of contract trips per week as will enable the Contractor to transport without any unreasonable delay and with the utmost efficiency and regularity all the mails (contemplated by this Contract) offered for transport by means of the Air Service, but in no circumstances and at no time during the Contract shall such frequency be less than three contract trips weekly in each direction :

Provided that the Company shall not be required to operate a frequency in excess of such three times weekly frequency until the Governments of the United Kingdom and the Commonwealth shall have agreed that an increase (as agreed from time to time) is necessary for the expeditious transport of all the mails.

(ii) A certificate in writing, signed by or on behalf of the Minister, that an agreement as aforesaid between the Governments of the United Kingdom and the Commonwealth has been reached or made shall, for the purposes of this Condition, be conclusive evidence of the fact as stated and binding on the Contractor.

(iii) The Contractor shall notify the Commonwealth as early as practicable prior to the commencement of the Service of the trip frequency per week with which the Air Service shall be commenced.

10. *Aircraft, Spare Engines, Spare Parts and Equipment to be held on Route of Service—Minimum numbers thereof.*—(i) The Contractor must and shall at all times throughout the currency of the Contract have available for use and also (but subject to Condition 26 *re* exchange of aircraft) hold on the route of the Service and for purposes of the Contract such a number of aircraft and spare engines and also spare parts and equipment of all kinds (all to be maintained as provided hereinafter) as will enable the Contractor to fulfil all its obligations under this Contract and taking into account and paying proper regard to the trip frequency as should be operative pursuant to Condition 9.

(ii) At and from the commencement of operation of the Service the Contractor shall own, and shall have available and hold as aforesaid, subject to Condition 26, not less than six in number of aircraft, but reference to such minimum number shall not necessarily be taken to infer or mean that such number is at any time sufficient with which to operate the Service, according to the trip frequency for the time being required under this Contract :

Provided however that for purposes of this Contract any of such aircraft (but not more than one at any one time) which is in course of replacement or which may be undergoing repair or overhaul, shall, for such period only as may be determined by the Minister, be deemed to be available for use and held as aforesaid.

(iii) No engine shall be used for purposes of the Contract unless the type of such engine has been approved beforehand either by the Minister or by the Controller-General of Civil Aviation.

(iv) The provisions in this Condition shall not be taken to prejudice or affect in any way the remaining provisions of the Contract.

11. *Time Table.*—(a) *Contract Trips.*—

- (i) The Time Table to be observed by the Contractor for performance of contract trips shall, at all times, be as approved by the Minister.
- (ii) Prior to the date of commencement of the Contract the Minister shall approve the Time Table which shall be adhered to by the Contractor subject to the alterations permitted by these Conditions.
- (iii) The Minister may at any time and from time to time by reasonable notice require an alteration in the Time Table in any way.
- (iv) The Time Table previously approved by the Minister and each and every alteration shall forthwith be notified in writing to the Contractor with notification of the date applicable in each case.
- (v) Except as specifically provided in Condition 12 of these Conditions the Time Table for the time being as approved by the Minister shall be strictly observed and adhered to by the Contractor, and shall not, except as in these Conditions specifically provided for, be departed from by the Contractor without the prior approval in writing of the Minister.

SECOND SCHEDULE—*continued.*

(b) *Non-Contract Trips.*—If the Contractor shall fly for its own purposes and with some degree of regularity or frequency along or adjacent to the route of the Service to and from stopping places fixed under this Contract any trips (not being merely isolated or emergency trips and not being contract trips) the following conditions shall be applicable to the part of the trips only between such stopping places :—

- (i) The Contractor shall—without being entitled to receive from the Commonwealth any payment in money or otherwise other than that provided by Condition 35 hereof—accept for transport and delivery to such stopping places such mails as the Postmaster-General desires, and the Conditions of this Contract applicable to mails on contract trips shall apply in like manner to any mails required by the Postmaster-General to be transported and delivered by means of such non-contract trips ;
- (ii) If the Minister so requires, the Time Table and Stopping Places to be applicable in respect of each service consisting of non-contract trips shall be notified by the Contractor to the Minister not less than twenty-four hours before the commencement of such service and in relation to mails the Contractor shall be liable *mutatis mutandis* in respect of such non-contract trips as if they were contract trips to be performed under this Contract.

12. *Contractor not to commence trips without mails.*—(i) Notwithstanding anything to the contrary in the provisions of the Contract, the Contractor shall not, unless directed to the contrary by the Minister, depart from any terminal stopping place of the Service (and/or from any such stopping places as the Minister may from time to time direct in writing) or otherwise commence or perform any contract trip or any non-contract trip in respect of which the Minister may fix a Time Table prior to the actual arrival of the connecting aeroplane, and unless and until all the mails which may then be offered by the Commonwealth or the Postmaster-General—or by any person having ostensible authority from the Commonwealth or the Postmaster-General so to do—to the Contractor for transport are taken by the Contractor.

(ii) If the Contractor makes default in compliance with or observance of the provisions of the preceding paragraph (i) in respect of any contract trips, then, unless the Minister shall be satisfied that such default arose from some good reason and not from any lack of care or of good faith on the part of the Contractor, and without prejudice to other rights and remedies of the Commonwealth, the Minister may direct that, in respect of that trip, a proportional amount of the monthly payment made to the Contractor under Condition 35 (but not exceeding the amount payable in respect of that trip) shall be withheld.

(iii) Should the Contractor on account of delay attributable to its observance of the provisions of paragraph (i) of this Condition be unable to commence or continue the contract or non-contract trip at the time for departure according to the Time Table, then the Contractor shall not be deemed to have committed a breach of this Contract or be in any way prejudiced thereby provided that it does not depart from the Time Table more than the time reasonably attributable to such delay.

13. *Contractor's Obligation to Transport and Safeguard Mails.*—(i) The Contractor must, in respect of contract trips and in case of non-contract trips where required by the Minister as aforesaid, accept at each and every terminal point and other stopping place, and transport by means of the Service, all mails which shall, on the direction or notification of any officer of the Postmaster-General's Department or other person ostensibly acting on behalf or at the direction of the Postmaster-General or of the Commonwealth or (where the circumstances require) of the United Kingdom Government, be tendered to the Contractor for transport, and shall keep and convey and deliver as directed by or on behalf of the Postmaster-General or the Commonwealth, in accordance with the address set out on the mail bag or container, all such mails at the requisite stopping places pursuant to the Contract on the days and at the hours specified in the Time Table for the time being in force.

(ii) The Contractor, in addition, shall (except where the Postmaster-General otherwise directs) be fully responsible for the safe custody until delivery of the mails, at such terminal points or stopping places and shall indemnify and keep indemnified (except where the Postmaster-General otherwise directs) the Commonwealth or the Postmaster-General from all monetary loss sustained or suffered by the Commonwealth or the Postmaster-General by reason of any loss, damage or destruction of the mails.

(iii) A statement in writing signed by or on behalf of the Postmaster-General specifying the amount of such loss, damage or expense shall be *prima facie* evidence of the amount of such loss, damage or expense.

SECOND SCHEDULE—*continued.*

(iv) The provisions of this Condition shall not be taken to limit or affect in any way the remaining provisions of the Contract.

14. *No Lien on Mails.*—The Contractor shall not have or attempt to exercise any lien upon any mails for or in respect of general average contributions or any contributions of a like nature.

15. *Contractor's Obligation to Carry Passengers and Goods.*—(i) The Contractor shall, in addition to his obligation of providing and operating a Service in accordance with these Conditions for the conveyance of mails as aforesaid, provide and at all times maintain such Service for the carriage and transport of passengers and such goods as are capable of being conveyed by air with the intent that passengers and goods shall not be refused carriage or transport if and to the extent that accommodation is available for same on the aircraft performing the particular contract trip.

(ii) In regard to the Contractor's obligation for conveyance and carriage of mails passengers and goods, as hereinbefore mentioned, the Contractor must observe and comply with the following preferences and rules—

(a) Mails are to have first preference. Under no circumstances, and notwithstanding anything in these Conditions to the contrary, shall the Contractor refuse to take any mails which are available to be taken at any time up to the actual departure of the aircraft from the particular stopping place.

(b) Through passengers (being passengers travelling to or from places outside the Commonwealth) shall (subject to the provisions of Condition 21) have second preference: Provided that the preference of Commonwealth officers under Condition 21 need not be accorded by the Contractor if all passenger accommodation properly to be made available has been previously booked for the particular trip, but in that event such Commonwealth officer shall not under any circumstances be refused accommodation on the immediately succeeding contract trip on which accommodation is available after mails only have been loaded.

(iii) In regard to the conveyance and carriage of passengers and/or goods, the Contractor's arrangements, obligations and acts shall in every way (except as specifically provided for in the provisions of the Contract) be independent of the Commonwealth, and the Commonwealth shall not under any circumstances have any obligation or responsibility to the Contractor or to any third persons or parties whatsoever in respect of the carriage or transport of any passengers or any goods, the intent of these Conditions being that (except for its obligation to the Commonwealth to provide, operate and maintain the Service as herein provided for) the Contractor shall as regards and between itself and any third parties be solely responsible to and shall make its own arrangements with all or any third persons or parties as if the Commonwealth were not a party to this Contract.

(iv) The Contractor's charges or prices for the conveyance of passengers and/or goods (other than passengers and goods conveyed to or from places outside the Australian section) shall be according to a scale to be approved at all times by the Minister.

16. *Space for Mails.*—All mails shall forthwith after delivery to the Contractor be locked up and until delivery is made by the Contractor shall be kept locked up by the Contractor, and shall be carried in such manner as may be from time to time directed by the Minister in a suitable and secure place, and shall at all times be protected against fire, theft, tampering, or otherwise to the satisfaction of the Minister.

17. *Receipts for Mails.*—The Contractor shall on receiving any mails give due receipt therefor in the form required by the Postmaster-General, and shall obtain an acquittance in the form directed by the Postmaster-General from the postal officer, or employee or agent to whom the mails are to be delivered pursuant to the Contract and who shall be readily available for the purpose. All such acquittances shall be produced for inspection by or handed over to an officer authorized by or on behalf of the Director-General, Posts and Telegraphs Department, on demand by such authorized officer.

18. *None other than Authorized Mails to be Transported.*—The Contractor shall not convey or permit to be conveyed by an employee or other person acting for or in place of the Contractor, from any place in Australia, any letters, postcards, letter-cards, or telegrams except such as shall have been delivered to it under the authority or by the direction of an officer, employee or agent of the Postmaster-General's Department.

SECOND SCHEDULE—*continued.*

19. *Point of Delivery or Acceptance of Mails.*—(i) In the case of services by flying boats, the Contractor shall at its own cost accept the mails at landing base on shore and likewise deliver them on shore at the terminal points and stopping places where the Contractor is required by or on behalf of the Postmaster-General to accept and/or deliver the mails. The Contractor shall at its own expense provide such facilities and personnel to ensure that the transport to and from land is efficiently and suitably done.

(ii) In the case of services by land aircraft the Contractor shall at its own cost accept and/or deliver the mails at the landing grounds at the terminal points and/or stopping places where the Contractor is required by or on behalf of the Postmaster-General to accept and/or deliver the mails.

(iii) In the case where the service involves the transfer of mails between flying boats and land aircraft operated by the Contractor as part of this Contract, the Contractor at its own expense shall transfer the mails and provide suitable and efficient facilities and personnel therefor.

20. *Delivery of Mails after Breakdown, &c.*—When through breakdown of any aircraft or through any other cause, the Contractor is unable to complete any contract or non-contract trip in accordance with these conditions, it shall at its own expense make arrangements for the safeguarding of the mails in its charge or custody and also for the most expeditious transport of such mails—by aircraft, motor vehicle or other form of transport according to the then prevailing circumstances—to the proper destination or destinations of such mails.

21. *Transport of Commonwealth Officers on Duty.*—(i) The Contractor shall, whenever and as often as required by the Minister, provide free of charge in the Contractor's aircraft for or on any contract trip a proper seat and accommodation for any Commonwealth officer or employee who may be authorized by the Minister or the Controller-General of Civil Aviation to inspect or report on any aircraft or any other property or the organization of the Contractor used for purposes of the Contract or to inspect or report on any aspect whatsoever of the Contractor's operation or maintenance of the Service or on or for any other purpose incidental to the Contract, including purposes under the Air Navigation Act or Regulations as affecting the Contract. Such officer or employee shall not be refused passenger accommodation in the aircraft performing the particular trip unless no passenger space is available after the mails and previously booked passengers have been taken on board the aircraft and in any case not later than the next succeeding trip if space is available after mails only have been loaded.

(ii) Subject to paragraph (iv) of this Condition, and except as regards free carriage and subject to the indemnity hereinafter mentioned such authorized person shall be carried in every other respect on exactly the same terms, conditions and rules as are applicable to other passengers carried on the service: Provided that the Contractor shall be reimbursed the cost of meals and/or hotel and like accommodation paid by the Contractor in respect of such person.

(iii) A statement in writing signed by or on behalf of the Secretary, Department of Defence, or by or on behalf of the Controller-General of Civil Aviation, that the person named to be carried is authorized as aforesaid shall be *prima facie* evidence that the fact is as stated.

(iv) The Commonwealth indemnifies the Contractor against all actions, proceedings, claims and demands against the Contractor in respect of any injury to any such authorized person carried free of charge pursuant to this condition, unless such injury was caused by the negligence or improper conduct of the Contractor or any pilot or other servant or person acting for or on behalf of or in place of the Contractor.

22. *Government Freight and Officials to be Carried at Reduced Rates.*—A rebate on freight charges and fares equal to the normal rate of commission therefor paid by the Contractor to its booking agents shall be allowed by the Contractor on freight charges to the Crown and the Government of Sudan and on fares to all persons in any service or employment of the Crown or of the Government of the Sudan when travelling on duty, leave or transfer and (when required) to members of their families, which for this purpose shall be deemed to mean the wife and children (including stepchildren and adopted children) dependent on the person concerned and being in the case of sons under age of eighteen and in the case of daughters unmarried.

23. *Conditions relative to Safety of Aircraft.*—(a) (i) All the Contractor's aircraft (but not Imperial aircraft) used on the service (not being less at any time than the minimum number stated according to paragraph (ii) of Condition 10 or such other minimum number as may be approved from time to time according to the provisions

SECOND SCHEDULE—continued.

of this Contract) shall at all times—whether or not operating on the Australian section—be registered under the Air Navigation Regulations, and at no time shall any of such aircraft fly on any day on the Australian section for any of the purposes of the Contract unless—

- (1) such Certificate of Registration (issued by the Commonwealth) is in full force and effect ;
- (2) a Certificate of Airworthiness of the aircraft under the Air Navigation Regulations issued by the Commonwealth is in full force and effect and all the conditions thereof are complied with ;
- (3) all directions from time to time issued by the Minister or by the Controller-General of Civil Aviation regarding the safety of the aircraft and the incorporation of safety apparatus, equipment and devices in the aircraft have been fully complied with ; and

(ii) the original of each Certificate of Safety to be furnished as required by the Air Navigation Regulations shall at the time be carried in the aircraft to which the Certificate refers, and shall subsequently be forwarded at weekly intervals by the Contractor to the Secretary, Civil Aviation Board ; the duplicate Certificate shall be retained by the Contractor.

(b) *Compliance with Air Navigation Act and Regulations.*—The Contractor and its employees servants and agents shall at all times in respect of all aircraft referred to in paragraph (a) of this Condition when operating on the Australian section (whether within or beyond the territorial limits of the Commonwealth) comply with and observe and shall hold operate use and/or maintain all and any such aircraft in accordance with the Air Navigation Act and Regulations for the time being in force.

(c) *Maintenance of Aircraft and Spare Engines.*—The Contractor must, and shall at all times during the Contract, keep and maintain in absolutely safe, efficient and airworthy condition and in accordance with the Air Navigation Regulations for the time being in force and to the satisfaction of the Minister or the Controller-General of Civil Aviation, each and all of the aircraft and spare engines used or to be used for the Service or for the purposes of the Contract.

(d) *Wireless Apparatus.*—The Contractor shall provide and instal (in accordance with the requirements for licensing of or by a competent authority for the Commonwealth) and at all times maintain in efficient and effective working order in respect of all aircraft referred to in paragraph (a) of this Condition and used or to be used for the purposes of the Service such wireless apparatus and equipment as the Minister or the Controller-General of Civil Aviation may from time to time approve.

(e) *Inspection of Workshops and Hangars.*—Any officer or agent authorized by the Minister or by the Controller-General of Civil Aviation for the purpose shall, at any time and from time to time, have free and uninterrupted access to, and shall have the right to inspect all or any aircraft (whether the Contractor's aircraft or Imperial aircraft aforesaid) or engines, spare parts, workshops or hangars used for or in connexion with the service or the contract, for the purpose of making any inspection or test considered necessary or desirable by the Minister or the Controller-General of Civil Aviation on any matter associated with the contract, including maintenance of aircraft or engines, spare parts or equipment, the manner or process of overhaul, repairs, or other maintenance, or the nature and manner of working of the Contractor's ground organization. The Contractor shall also supply all such particulars relative to the inspection or inspections or tests desired as may be required by the officer or agent authorized as aforesaid and shall facilitate in every way such inspection or test.

24. *Australian Personnel (Employees to be Employed and Other Conditions).*—(i) In respect of all aircraft used or to be used on the Service (including Imperial aircraft employed in the Service) and as concerns all the Contractor's operations associated with this contract, no person shall be employed or engaged by or on behalf of the Contractor or in any way serve or act as pilot or as a navigator or as a wireless operator or as a ground engineer in connexion with this contract, whether on or in connexion with the Contractor's aircraft or Imperial aircraft, unless such person is duly licensed under and in accordance with the laws of the Commonwealth or of the United Kingdom relating to such qualifications or governing such licence :

Provided that the Minister may in respect of any particular case or cases waive this requirement either wholly or in part ;

SECOND SCHEDULE—*continued.*

(ii) Unless the Minister or the Controller-General of Civil Aviation otherwise expressly approves in writing in any particular case, no such pilot shall act as a ground engineer, or vice versa ;

(iii) All pilots, navigators, wireless operators and ground engineers employed or engaged in any way by the Contractor in connexion with the carrying out of the Service must and shall be at all times natural-born British subjects, and in engaging such employees the Contractor shall give preference to Australians ; all other persons employed engaged or used for any other purpose in connexion with the Service shall be British subjects, unless no qualified British subjects are available for the work concerned.

(iv) No pilot, navigator, wireless operator or ground engineer shall be employed engaged, act or otherwise be concerned directly or indirectly in or on the Service unless he has previously undertaken, in manner required by the Minister, to serve, if required by the Minister, as a member of the Royal Australian Air Force Reserve, and does so serve when called upon by the Commonwealth.

25. *Number and Location of Licensed Personnel.*—The Contractor shall at all times during the currency of this contract keep in employment on and for purposes of the contract and available and located on the route of the Service such a number of pilots, navigators, wireless operators and ground engineers (respectively licensed and qualified in accordance with the Conditions of this Contract) and other personnel as will ensure the efficient safe and regular operation of the Service.

26. *Exchange of Aircraft between Sections of the Imperial Network.*—Notwithstanding anything to the contrary herein contained, whenever an aircraft from the Imperial Air Network beyond Singapore (which aircraft are throughout this Contract referred to as “Imperial aircraft”) is brought to operate on the Australian section, then the Contractor may in exchange permit one of its aircraft to operate in exchange on the Imperial Network beyond Singapore, and upon such exchange the following provisions shall apply :—

(a) Each of such Imperial aircraft shall be of the said “Short” “C” class type flying boat (including however such other type of aircraft as the Governments of the United Kingdom and the Commonwealth may have mutually agreed to substitute therefor on the England-India-Australia Air Service) or such other type as shall have been approved beforehand by the Minister ;

(b) No exchange shall be effected or permitted unless—

(i) The Certificate of Airworthiness and other documents of each Imperial aircraft are validly in force according to the laws of the country of its then registration ;

(ii) Such Certificate of Airworthiness and other documents are approved beforehand by the Minister or the Controller-General of Civil Aviation ;

(c) Subject to fulfilment of the foregoing requirements an exchange may be effected and the Imperial aircraft permitted to operate on the Australian section provided—

(i) that the Certificate of Airworthiness and other documents of the particular Imperial aircraft remain validly in force during the period of its operation on the Australian section ; and

(ii) that the approval of the Minister or the Controller-General of Civil Aviation to the Certificate of Airworthiness and other documents as aforesaid is not withdrawn.

(d) If at any time the said approval of the Minister or the Controller-General of Civil Aviation to the Certificate of Airworthiness or any other documents of the particular Imperial aircraft is withdrawn—

(i) such Imperial aircraft shall not be used or permitted by the Contractor to be flown for the purpose of the carriage of passengers and/or mails or for any of the purposes of the Contract ;

(ii) the Contractor shall immediately on request by the Minister or the Controller-General of Civil Aviation replace such Imperial aircraft with another aircraft of a type previously approved by the Minister or the Controller-General of Civil Aviation. This requirement shall not be taken to affect or prejudice the applicability of the remaining Conditions of this Contract.

SECOND SCHEDULE—continued.

- (e) The number of the Contractor's aircraft permitted to operate in exchange beyond Singapore shall not at any time exceed the number of Imperial aircraft for the time being approved and available for operation on the Australian section pursuant to the provisions of this Contract.
- (f) Each of such Imperial aircraft shall be deemed to be under the control of the Contractor for purposes of fulfilling the Contractor's obligations under this Contract, and the Contractor shall obey, and each of such aircraft shall be operated and maintained according to, such orders and directions as to safety as are from time to time given by the Minister or the Controller-General of Civil Aviation.
- (g) The Contractor shall be bound to fulfil the provisions *mutatis mutandis* of the Contract as if the Contractor's aircraft had never been exchanged for the Imperial aircraft and in addition Condition 24 of these Conditions shall be as fully applicable in respect of such Imperial aircraft as if they were the Contractor's aircraft.
- (h) The Contractor's aircraft when operating beyond Singapore shall be entirely under the control of the United Kingdom Government to the end that the United Kingdom may exercise the same authority and control thereover for all and any purpose as if they were in fact Imperial aircraft.

27. *Application of Conditions 23 and 24 to Imperial aircraft.*—The provisions of Conditions 23 and 24 hereof shall not apply to an Imperial aircraft or the members of its crew except so far as the Minister may from time to time and at any time direct:

Provided that, and notwithstanding the foregoing, the Commonwealth and its officers shall at all times have free and uninterrupted access to all aircraft and engines for the purpose of such inspection and inspections as the Minister and/or the Controller-General of Civil Aviation may desire or direct.

28. *Overhaul of Aircraft and Construction of New Aircraft within the Commonwealth.*—(i) Subject to the basis for payment therefor having been previously mutually agreed upon, the Minister on behalf of the Commonwealth may require the Contractor from time to time to have effected within the Commonwealth such major repair work and overhauls (in respect of the Contractor's aircraft referred to in sub-paragraph (a) of Condition 23) as up to the time of the request are not being undertaken or effected within the Commonwealth. If pursuant to such request, initiated by the Commonwealth, the Contractor is put to extra financial cost in complying with such requirement, the Commonwealth will pay the Contractor an amount to meet any such extra cost (including any loss on account of delay) calculated on the basis previously mutually agreed upon.

(ii) Subject to the basis for payment therefor having been previously mutually agreed upon, the Minister on behalf of the Commonwealth may from time to time require of the Contractor—in respect of new aircraft which the Contractor from time to time during the currency of the Contract may require for the purposes of this Contract—that such new aircraft shall, either wholly or partly as specified by the Minister, be constructed within the Commonwealth. If, pursuant to such request initiated by the Commonwealth, the Contractor is put to extra financial cost in complying with such requirement, the Commonwealth will pay the Contractor an amount to meet any such extra cost (including any loss on account of delay) calculated on the basis previously mutually agreed upon.

29. *Assignment of Contract.*—(i) The Contractor shall not, without obtaining the consent in writing of the Minister—

(a) assign or underlet, or otherwise part with the Contract or any part thereof;

or

(b) assign or otherwise part with as against the Commonwealth all or any part of the moneys payable or to become payable under the Contract, otherwise than in the ordinary course of business.

(ii) Any such assignment, underletting or otherwise parting with the Contract without such consent as aforesaid, or any agreement, contract or covenant for the same, or any irrevocable power of attorney, or any power of attorney coupled with an interest to receive any moneys payable under the Contract or any part thereof respectively, shall have no force or effect as against the Commonwealth.

30. *Power of Commonwealth to Arrange for Continuity of Service.*—(i) Should the Minister on behalf of the Commonwealth at any time be of the opinion, for sufficient reason, that the Contractor—

(a) is unable; or

SECOND SCHEDULE—*continued.*

- (b) refuses or threatens to refuse; or
- (c) is likely to default in his obligation—

to commence or complete any contract trip as and in the manner required by any and all of the provisions of the Contract, then the Minister may make such separate arrangements, independently of the Contractor, as the Minister considers necessary or desirable to carry the mails intended for the particular contract trip in respect of which default is anticipated by the Minister.

(ii) The exercise of such power shall not be deemed a breach of contract by the Commonwealth.

(iii) The exercise of such power shall at all times be subject also as follows:—

- (a) The Contractor shall not be entitled to any compensation or damages whatsoever in respect of such exercise.
- (b) If default is actually made by the Contractor in commencing and completing the contract trip according to time-table unless such default arose from some good reason and not from any lack of care or of good faith on the part of the Contractor, the Contractor shall be liable for such expense, loss or damage as the Commonwealth has incurred, suffered or lost by reason of the exercise of the power and/or the failure of the Contractor.
- (c) If default is not actually made the Contractor shall be deemed to have performed the contract in respect of such contract trip.

31. *Basis of Calculation of Amount Payable per Contract Trip.*—Whenever it is necessary to calculate for any purpose relating to or arising out of this contract the amount of subsidy and/or payment in respect of the carriage of mails as for a single contract trip, such amount shall be ascertained by dividing the relevant yearly payment, ascertained in accordance with Condition 35, by the total number of contract trips to be flown by the Contractor in that yearly period according to the trip frequencies operative during that year.

32. *Breach of Contract.*—(i) If the Contractor shall fail to observe or perform any requirement going to the root of the Contract, the Minister, on behalf of the Commonwealth, may, by notice in writing to the Contractor, determine the Contract and/or recover such loss or damage as may be suffered or incurred by the Commonwealth by reason of the failure or breach and/or take action on the bond.

(ii) The Minister, in the event of the Contractor failing to observe or perform any requirement arising under the Contract may, in lieu of exercising his rights under paragraph (i) or (iii) of this Condition, withhold from any payment any moneys or subsidy due or to become due to the Contractor, and retain, as and for liquidated damages, such amount, not exceeding One hundred pounds (£100), as may be determined by the Minister in respect of each such failure (or if the failure is a continuing one, such amount as may be fixed by the Minister in respect of each day the failure may continue), provided nevertheless that the fact that the Minister in any case has withheld and retained any amount from the moneys or subsidy due as aforesaid, in lieu of exercising his rights under paragraph (i) or (iii) of this Condition, shall not prevent the Minister, in the event of any subsequent failure of a similar or other nature, from exercising his said rights under paragraph (i) or (iii) of this Condition.

(iii) If the Contractor shall assign or underlet or otherwise part with the Contract contrary to the stipulation hereinbefore contained, or if any petition shall be successfully presented in any Court of competent jurisdiction for the winding-up of the Contractor, either compulsorily or under the supervision of the Court, or if the Contractor shall go into voluntary liquidation other than for the purpose of reconstruction, or if the Contractor shall take the benefit of or bring its estate within the operation of any Act passed or to be passed for the winding-up of companies or shall make any assignment or conveyance of its property for the benefit of any of its creditors generally, then and in any of the said cases the Minister, on behalf of the Commonwealth, may (without prejudice to any other remedy or power, or to any right of action or otherwise of the Commonwealth in respect of any failure or breach by the Contractor of the conditions, agreements, stipulations, or provisions of this Agreement)—

- (a) by notice to the Contractor, determine the Contract and/or recover such loss or damage as may be suffered or incurred by the Commonwealth by reason of the failure or breach, and, or
- (b) take action on the bond.

SECOND SCHEDULE—*continued.*

33. *Deduction for Unperformed Trips, Late Arrivals, &c.*—Subject only to the provisions of sub-paragraph (iii) of Condition 12 of these Conditions, there shall, unless the Minister otherwise directs, be withheld from any monthly payment to be made by the Commonwealth to the Contractor under Condition 35 the amount of subsidy and other moneys payable in respect of any contract trip which the Contractor fails to complete within twenty-four hours after the due time of completion of the particular contract trip as fixed according to the time table for the time being in force:

Provided that in respect of each case where such trip is actually completed, if the Minister is satisfied that failure arose from some good reason and not from any lack of care or of good faith on the part of the Contractor the Minister shall direct payment of the full subsidy for such particular trip.

34. *Compliance with Laws of Foreign Countries.*—The Contractor shall not in any way operate the Service, or permit its employees, servants, or agents to act, in breach of any legal or administrative requirements of any foreign territory in or out of which the service may operate.

35. *Payments to the Contractor.*—(i) The Commonwealth will pay to the Contractor a minimum annual subsidy of £40,000 sterling, and if in any year the weight of Australian mail carried by the Contractor exceeds 40,000 pounds, the amount of the subsidy will be increased by 8s. sterling for each pound of mail carried by the Contractor in excess of 40,000 pounds, but so that the maximum annual subsidy payable under this paragraph shall not exceed £50,000 sterling.

(ii) The Commonwealth will also pay to the Contractor in respect of Australian mails carried a minimum annual payment of £32,000 sterling, and if in any year the weight of Australian mails carried by the Contractor exceeds 40,000 pounds, the amount of the subsidy will be increased by 16s. sterling for each pound of such mail carried by the Contractor in excess of 40,000 pounds, but so that the maximum payment under this paragraph shall not exceed £52,000 sterling per annum.

(iii) Interim payments under paragraphs (i) and (ii) of this Condition shall be made monthly to the Contractor during each contract year at or so soon as practicable after the end of each month.

(iv) Each monthly payment shall, subject as aforesaid, be of such amount as to ensure that the Contractor receives, in respect of so much of the contract year as has elapsed at the end of the month in respect of which the payment is made, an average monthly payment calculated as follows:—£8,000 sterling plus 24s. sterling for each pound weight by which the average monthly load carried during that period exceeds 3333½ pounds weight:

Provided that the total of the monthly payments made shall not at the end of any month in any contract year be such as to average more than £8,500 sterling per month.

(v) For the purpose of assessing the weight of Australian mails carried in order to ascertain the amounts payable under this Condition—

- (a) the term "Australian mails" shall include only mails originating within the Commonwealth or its territories and required to be carried by the Contractor pursuant to this Contract;
- (b) regard shall be had only to such mails as are carried on the trips (whether contract or non-contract) in the direction Sydney to Singapore;
- (c) the weight of Australian mails carried on such trips shall for the purpose of calculation be taken in respect of the stage Darwin-Koepang unless some other stage of the route is by mutual agreement substituted therefor.

(vi) Any reference in this Condition to "sterling" means sterling London, England, and for the purposes of calculation of any monthly payment shall be according to the telegraphic transfer rate of exchange on London (as advised by the Commonwealth Bank) as on the last day of the month for which the payment is to be made, but there shall not be added any moneys on account of transfer rate, whether telegraphic demand or otherwise.

(vii) The making of payments under this Condition shall be subject to Conditions 3, 12, 32 and 33, but any amounts withheld under these Conditions shall be included for the purpose of determining the total amount paid by the Commonwealth to the Contractor—

- (a) under paragraph (i) or paragraph (ii) of this Condition (as the case may be) or under both of those paragraphs; and

SECOND SCHEDULE—*continued.*

(b) by way of subsidy and postal contributions for the purposes of the Empire Air Mail Scheme,

as if such amounts had actually been paid by the Commonwealth to the Contractor and equivalent amounts paid by the Contractor to the Commonwealth as and for liquidated damages.

36. *Moneys may be tendered in Australian Currency.*—All moneys payable under this Contract shall be payable in currency of the Commonwealth converted from sterling in the manner provided in the preceding Condition 35.

37. *Books, Records, Finance.*—(i) The Contractor shall keep separate and distinct books and accounts relating to the Service and in such manner as to disclose readily and in such detail as the Minister or the Controller-General of Civil Aviation may from time to time require all receipts and earnings from the Service, and all expenditure (whether by way of cash outlay or stores and material consumed) and liability incurred which are directly attributable to the carrying out of the Service.

(ii) The Contractor shall also keep separate and distinct detailed cost accounts of all constructions and repairs carried out in his workshops which were directly or indirectly necessitated by the carrying out of the Service, such cost accounts to show separately, as far as practicable, the amounts charged for labour and material, and overhead and other charges, and to be supported by vouchers, time-sheets, stores requisitions and other relevant documents.

(iii) The Contractor shall furnish to the Minister as frequently as issued, and at least yearly, a copy of its balance-sheet and profit and loss account duly certified by the Contractor's auditors. Whenever the balance-sheet and profit and loss account include transactions other than transactions affecting the Service, all transactions affecting the Service shall be shown separately, and if for the purpose of preparing the said balance-sheet and profit and loss account it is necessary to allocate to the Service a proportion of expenses which are jointly chargeable to the Service and other sections of the Contractor's business, the Contractor shall furnish to the Minister with the said balance-sheet and profit and loss account, a statement showing in itemized detail the expenses so allocated, and the basis of apportionment of each item among the various branches or departments of the Contractor's business.

(iv) All books of account and other records kept by the Contractor for the purposes of this Contract shall at all times and from time to time be available for inspection by any person duly authorized by the Minister.

(v) The Contractor shall as soon as practicable after the end of each calendar month furnish to the Minister a statement showing in detail the gross receipts and earnings of the Contractor during the previous calendar month in respect of the Service.

(vi) The Contractor shall from time to time as and when required by the Minister furnish the Minister with such financial or other information as to the operation and maintenance of the Service as the Minister may require.

38. *Supply of Information or Statistics.*—(i) The Contractor shall whenever and so often as requested in writing by the Secretary, Civil Aviation Board, supply without delay all the information, particulars, or statistics as the Secretary, Civil Aviation Board, may from time to time require relating to the Contractor's business (so far as it relates to the said Service) and any matter, act or thing associated with or incidental to the Service or the Contract, including information, particulars or statistics relating to aircraft, engines, spare parts and any property whatsoever used for or in connexion with the Contract or relating to any part of the Contractor's organization or to the licensed personnel or other persons employed or working on or for the purposes of the Service or the Contract.

(ii) The Commonwealth shall not disclose to any third parties any information obtained from the Contractor the disclosure of which would be materially prejudicial to the Contractor's interests.

39. *Joy-riding.*—The Contractor either by itself, its servants, agents, employees or other persons or parties acting for or in the place of the Contractor shall not at any time during the Contract, at such places as the Minister may from time to time notify the Contractor in writing, use or permit to be used for or in connexion with

SECOND SCHEDULE—*continued.*

joy-riding an aircraft used for or allocated to the purposes of this Contract. "Joy-riding" for purposes of this Condition shall mean a flight or trip of short duration, beginning and ending in the same place or locality and undertaken for remuneration or reward.

40. *Contract to be Interpreted in Accordance with Australian Laws.*—All the provisions of this Contract shall be interpreted in accordance with the law in force in the State of New South Wales in the same manner as if all parties to the Contract were resident or incorporated in and the Contract was executed in and wholly to be performed within such State.

41. *Arbitration and Legal Proceedings.*—(i) Subject to the Conditions of Contract, any dispute or difference, except in respect of matters left for determination or decision by some specified person or authority, which may arise between the Commonwealth, the Minister, the Postmaster-General, or any of their respective servants or officers, and the Contractor, shall be referred for determination under and in accordance with the laws in force in the State of New South Wales relating to arbitration to two arbitrators, one to be appointed by each party, and, in default of agreement between these two arbitrators, to an umpire to be mutually agreed upon and appointed by these two arbitrators.

(ii) Under no circumstances shall any legal proceedings against the Commonwealth or its instrumentalities be brought, commenced, instituted or prosecuted outside the Commonwealth of Australia (except by way of appeal from the High Court of Australia) by the Contractor in respect of any act, matter or thing, whatsoever arising under or incidental to this Contract.

42. *Ground Facilities.*—(i) The Commonwealth undertakes to provide, as soon as practicable, at the terminal points and at the stopping places within Australia specified in paragraph (a) of Condition 7, ground facilities and organization according to a detailed schedule of requirements agreed upon between the Minister and the Secretary of State for Air in pursuance of the agreement made between the Governments of the United Kingdom and the Commonwealth for the purpose of carrying out the Empire Air Mail Scheme; and to provide, prior to any increase in the number of stopping places, or the substitution of any other stopping places, in pursuance of paragraph (b) of Condition 7, the like ground facilities and organization at those additional or substituted stopping places.

(ii) The Contractor (both in respect of Imperial aircraft and its own aircraft) shall, so far as the Commonwealth is concerned, have the right to use free from all charges the ground facilities and organization provided by the Commonwealth in pursuance of the last preceding paragraph, and shall be reimbursed any charges actually paid by the Contractor for the use of such ground facilities and organization at places within Australia.

(iii) For the purposes of paragraphs (i) and (ii) of this condition the term "ground facilities" means aerodromes, landing areas with jetties and slipways, motor control boats equipped with searchlight apparatus, auxiliary launches, mooring buoys for aircraft and such facilities as may be requisite for Customs and Immigration Authorities, but does not include the hangar erected by the Commonwealth at Rose Bay, Sydney, nor the use of any of the said facilities for the purposes mentioned in paragraph (v) of this Condition.

(iv) The Contractor shall pay the charges imposed by the local authorities for housing and landing in Netherlands East Indies and shall be reimbursed or shall pay to the Commonwealth, as the case may be, the amount by which such charges exceed or fall short of a standard rate of 30s. sterling per landing. In the event of a charge not being imposed for any landing the Contractor shall pay the Commonwealth the amount of 30s. sterling in respect of such landing.

(v) The Contractor at its own expense shall be responsible for the supply provision and maintenance at all times of all suitable ground facilities, equipment and personnel required—

- (a) for the proper handling and maintenance of the aircraft and engines employed on the service;
- (b) for dealing at all terminal and stopping places with passengers and freight; and
- (c) for loading unloading and transferring mails:

SECOND SCHEDULE—*continued.*

Provided, however, that the Commonwealth shall make available to the Contractor the free use and occupation of the land sites or areas necessary—within the limits of Australia only—for the provision, at terminal and stopping places regularly used for the time being for the purposes of the service under this Contract, of the ground facilities and equipment required for the proper handling and maintenance of the aircraft and engines employed on the service.

(vi) The Contractor shall be allowed to use the hangar erected by the Commonwealth at Rose Bay, Sydney, free of charge but subject to the condition that the Contractor shall pay all charges for electricity used at the hangar, and shall pay at excess water rates for water used at the hangar.

(vii) The Contractor shall be allowed the use and occupation of the workshop annex erected by the Commonwealth at Rose Bay and of any other buildings (or portions thereof) erected by the Commonwealth at Rose Bay or at any other place in Australia which are on the route and available for use by the Contractor, subject to payment of such rental and charges as may be agreed upon, and the payment of all charges for electricity used at the annex, and to payment at excess water rates for water used at the annex.

(viii) The Contractor shall be allowed to use any facilities provided by the Commonwealth and available for use by the Contractor (in addition to those hereinbefore in this Condition referred to) upon payment of such charges as may be agreed upon.

(ix) Nothing in this Condition shall prevent the Contractor providing at its own expense such additional facilities as the Contractor desires, provided that the Contractor does not interfere with or damage any facilities provided by the Commonwealth.

43. *Refund of Customs and other Duties and Taxes.*—(i) The Commonwealth will refund to the Contractor any customs or other duties or taxes collected in Australia on fuel and oil used by the Contractor's aircraft on flights in performance of the service (including trials and test flights for the purposes of the service) and upon equipment imported into Australia for the purpose of the service.

(ii) In this Condition "equipment" means aircraft, aircraft parts and spares; aircraft engines, aircraft engine parts and spares; aircraft and engine instruments and parts and spares for such instruments; wireless sets specially for use in aircraft, and spares for such sets; and includes technical and workshop equipment of a specialized nature (i.e., not commonly used in other trades) required for the aircraft, the engines, the instruments or the workshops of the Contractor.

(iii) The Commonwealth will reimburse the Contractor the amounts of duties paid by the Contractor in Netherlands East Indies on fuel and oil used by the Contractor's aircraft while operating the service.

44. *Aircraft &c., to be at disposal of Government in case of emergency.*—(i) The Contractor shall in any national emergency or apprehended emergency place all the aircraft (including Imperial aircraft operating on the route in exchange for the Contractor's aircraft pursuant to Condition 26 hereof) used for purposes of the Service and all other facilities including plant parts and equipment of all kinds at the disposal of the Commonwealth Government and in respect thereof the Commonwealth shall repay to the Contractor any operating costs incurred by the Contractor on behalf of the Commonwealth together with reasonable compensation in respect of any loss sustained by the Contractor due to the use by the Commonwealth under this Condition of the Contractor's aircraft or other facilities, but nothing herein shall affect in any way prerogative rights of His Majesty in right of the Commonwealth or any power of the Commonwealth or any authority under the Commonwealth under any statutory provisions or otherwise. The Contractor shall be relieved from responsibility under this contract in so far as it is unable to perform the same by reason of any such use.

(ii) The Contractor also agrees that in the circumstances above set out such of the Contractor's aircraft as may be operating beyond Singapore in exchange for Imperial aircraft or otherwise shall be at the like disposal of His Majesty's Government in the United Kingdom.

45. *Commonwealth's Option over Contractor's hangars, &c.*—(i) The Commonwealth shall, on and pursuant to notice in writing to be given to the Contractor prior to the determination of the Contract, have the option of purchasing from the Contractor at their fair operating value at the time of exercise of the option of

SECOND SCHEDULE—*continued.*

purchase all or any hangars, workshops or buildings (if any) erected by the Contractor on or along the route of the Service pursuant to any agreement with the Commonwealth, together with all or any hangars, workshops, or buildings (if any) erected by the Contractor on or along the route of the Service for purposes of the Service.

(ii) In the event of the Commonwealth exercising its option of purchasing all or any of the said hangars, workshops and/or buildings the purchase price to be paid and calculated on the basis aforesaid shall in default of agreement between the parties be determined by arbitration of two arbitrators, one to be appointed by each party, under the laws relating to arbitration which are in force in the State of New South Wales at the time of execution of this Contract, and, in default of agreement between such arbitrators, by a single umpire to be mutually appointed by and between such arbitrators.

(iii) In the event of the Commonwealth not exercising its option of purchasing all or any of the hangars, workshops, and/or buildings, of the Contractor provided for under paragraph (i) of this Condition, the Contractor may within a period of three calendar months from the date of determination of this Agreement take down and remove any hangars, workshops and/or buildings or other erections affixed, constructed or erected by the Contractor on or to any land made available to the Contractor by the Commonwealth for the purposes of this Contract, but the Contractor shall leave such lands levelled off and in a clean and tidy condition to the satisfaction of the Minister.

46. *Contractor to notify delayed trips.*—The Contractor shall, in respect of any and every contract trip performed or to be performed under this Contract, and in respect of such non-contract trips on which mails are carried, take every step and use every endeavour to notify with the least possible delay any and every delay or late running of aircraft (according to the time table for the time being in force) to the postal authorities along the route of the Service and also to any other Contractor operating air services connecting with the Contractor's service and also to the Secretary, Civil Aviation Board.

47. *Conditions not to be varied.*—None of the Conditions of Contract shall be varied, waived, discharged, or released either at law or in equity except in manner herein provided for or otherwise than with the express consent in writing of the Minister.

48. *Ministerial discretion.*—Wherever in this Contract any matter is left in the discretion, or for the opinion determination or for the approval, of the Minister or any other Commonwealth authority, such opinion determination or discretion shall be reasonably exercised and any such approval shall not be unreasonably withheld or withdrawn.

49. *Notices to Contractor.*—Any notice, demand, request, direction or other communication of any kind to be given served or made by the Commonwealth, the Minister, the Controller-General of Civil Aviation, or the Secretary, Civil Aviation Board, to the Contractor under these Conditions shall be deemed to have been effectively given served or made if signed by or on behalf of the Minister, or by or on behalf of the Secretary, Department of Defence, the Controller-General of Civil Aviation, or the Secretary, Civil Aviation Board, as the case may be, and sent by prepaid post, cable, or telegram, and addressed to the registered office or usual or last known address of the Contractor.

50. *Crew.*—(i) No aircraft shall at any time fly or be flown on any contract trip unless the crew of such aircraft includes the following personnel licensed in manner required by this Contract:—

- 2 Pilots,
- 1 Wireless Operator,
- 1 Navigator:

Provided that one member may act in the dual capacity of Pilot and Navigator.

(ii) The Minister may from time to time require the foregoing requirements as to personnel to be varied if circumstances in his opinion warrant such variation.

51. *Bond to secure Execution of Agreement.*—The Contractor shall, simultaneously with the execution of this Agreement, procure the execution and delivery to the Commonwealth by a Bank or Company approved by the Commonwealth of a bond in a form approved by the Minister as security for the observance and performance on the part of the Contractor of all and singular the terms, conditions and obligations contained in this Contract.