

**SCHEDULE 5 PERFORMANCE MANAGEMENT SYSTEM**

**Performance Measurement System**

Management and Measurement of the Key Performance Indicators

1. The Contract Manager will monitor the KPIs, and will determine performance against the KPIs, and the application of any reduction of Underwriting Fees due to failure to meet the KPIs.
2. Where a KPI has not been achieved, the onus will be on the Service Provider to demonstrate why the failure should not be deemed under-performance. The outcome will be determined by the Contract Manager.
3. KPIs will be reviewed at the end of each year of the Contract.

**[REDACTED]**

1. The quarterly average of on-time departures, defined as within fifteen minutes of scheduled departure times, [REDACTED]
2. The quarterly average of late departure and arrivals, [REDACTED]
3. This KPI will not apply to delays caused by Force Majeure events

**[REDACTED]**

1. In any quarter the number of departures from Perth [REDACTED]
2. This KPI will not apply to delays caused by Force Majeure events.

**[REDACTED]**

1. In any month, in the event that the Aircraft becomes unserviceable, [REDACTED]
2. This KPI will not apply to delays caused by Force Majeure events.

**[REDACTED]**

1. The instances of passengers being delayed overnight and not being offered overnight accommodation [REDACTED]



[REDACTED]

2. [REDACTED]

[REDACTED] KPI

1. [REDACTED]

2. [REDACTED]

[REDACTED]

1. The Weighted Average Fare (WAF) per Sector is defined as the weighted average of all fares, weighted by passenger numbers, excluding any promotional fares at levels beneath the fares offered in the tendering process. All levies, taxes and charges are included in the calculation of the WAF excluding GST and third party credit card charges.

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

[REDACTED]

1. [REDACTED]

2. [REDACTED]



3. [REDACTED]

4. [REDACTED]



**SCHEDULE 8 PERFORMANCE GUARANTEE**

THIS DEED OF GUARANTEE is made the            day of            2010

**BETWEEN COMMONWEALTH OF AUSTRALIA** acting through the  
Attorney-General's Department ('the Department')

of the one part

**AND Virgin Blue Holdings Ltd ABN [REDACTED]**  
(**'Guarantor'**)

**Recitals**

---

- A. The Department wishes to procure certain specified corporate services.
- B. Virgin Blue Airlines Pty Ltd ('Service Provider') has agreed to supply the corporate services to the Department under the annexed agreement (the 'Contract').
- C. The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

**Agreement**

---

- 1. The Guarantor guarantees to the Department the performance of the obligations undertaken by the Service Provider under the Contract on the conditions set out in this Deed.
- 2. If the Service Provider fails to execute and perform its obligations under the Contract, the Guarantor will, if required to do so by the Department, complete or cause to be completed the obligations set out in, and in accordance with the conditions of, the Contract. If:
  - a. the Service Provider commits any breach of its obligations (whether or not the Contract is then terminated for default); or
  - b. the obligations of the Service Provider are unenforceable or disclaimed by a liquidator or trustee in bankruptcy, in whole or in part,

the Guarantor will indemnify the Department against losses, damages, costs and expenses (including legal expenses on a solicitor and own client basis) directly incurred by reason of an event described in paragraph (a) or (b) above and pay such amount of losses, damages, costs and expenses directly to the Department.

3. The Guarantor agrees to pay interest to the Department on any amount payable by it to the Department under this Guarantee from when it becomes due for payment, during the period that it remains unpaid, on demand, or at times determined by the Department calculated on daily balances at the rate of four percent (4%) over [the Commonwealth Bank of Australia's] indicator interest rate, and is capitalised (if not paid) every seven (7) days.
4. The Guarantor must make payments to the Department under this Guarantee no later than 11:00am Canberra time on the due date to the account of the Department which the Department designates by notice.
5. If a Law requires the Guarantor to withhold or deduct taxes from a payment so that the Department would not actually receive for its own benefit on the due date the full amount provided for under this Guarantee, then:
  - a. the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, the Department is entitled to receive the amount it would have received if no deduction had been required;
  - b. the Guarantor must make the deduction; and
  - c. the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable Law.
6. The Guarantor will not be discharged or released or excused from this Deed by an arrangement made between the Service Provider and the Department with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Service Provider or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Service Provider will continue in force and effect until completion of all the Service Provider's obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.
7. The undertakings of the Guarantor under this Deed will not exceed the obligations of the Service Provider under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Service Provider to the Department under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Service Provider with respect to any such liability and the resolution of disputes.
8. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of,

or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.

9. For the purpose of this Deed, where an obligation of the Service Provider under the Contract has not been performed, the Service Provider will be taken to have failed to perform that obligation notwithstanding that the Service Provider has been dissolved or is subject to external administration procedures under chapter 5 of the *Corporations Act 2001* or any other Law.
10. The guarantee in this Deed is a continuing guarantee to the Department until the obligations and liabilities of the Service Provider under the Contract have in all respects been performed, observed and discharged.
11. The following notice arrangements apply:
  - a. notice or other communication which may be given to or served on the Guarantor under this Deed will be deemed to have been duly given or served if it is in writing, signed on behalf of The Department and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to The Department from time to time;
  - b. a notice or other communication which may be given to or served on The Department under this Deed will be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to The Department at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
  - c. a notice sent by post will be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
  - d. a notice sent by facsimile transmission or transmitted electronically will be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.
12. A statement, signed on behalf of the Department by any of its authorised representatives, as to any matter or any amount at the date specified in the statement is conclusive evidence in the absence of manifest error.
13. Until the obligations of the Service Provider have been performed in full, the Guarantor may not:

- a. share in any Security Interest or money received or receivable by The Department in relation to the guaranteed obligations, or stand in the place of The Department in relation to any Security Interest or right to receive money;
  - b. take any steps to enforce a right or claim against the Service Provider relating to any money paid by the Guarantor to The Department under this Deed;
  - c. have or exercise any rights as surety in competition with The Department;
  - d. receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or Security Interest from or on account of the Service Provider or any other person; and
  - e. claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which The Department is a party.
14. If the Service Provider is wound up or bankrupted, the Guarantor irrevocably authorises the Department to prove for all money that the Guarantor has paid under this Deed until the guaranteed obligations have been irrevocably performed in full. The Department is not obliged to do this.
15. If, after the Department applies any amount against any of the obligations of the Service Provider, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any Law relating to bankruptcy, winding up or the protection of creditors:
- a. the rights of the Department are to be reinstated and will be the same in respect of that amount, or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
  - b. the Guarantor shall immediately do anything (including the signing of documents) required by The Department to restore to The Department any guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.
16. The Guarantor indemnifies the Department against, and shall pay the Department on demand, the amount of all losses, liabilities, costs, expenses, stamp duty and goods and service taxes payable in connection with this Guarantee and in connection with preserving its rights under this Guarantee provided the Department gives no less than fourteen (14) days notice of any claim under this clause.