

**AGREEMENT BETWEEN**  
**THE GOVERNMENT OF NEW ZEALAND**  
**AND THE GOVERNMENT OF AUSTRALIA**  
**RELATING TO AIR SERVICES**

The Government of New Zealand and the Government of Australia (hereinafter, "the Parties");

Being Parties to the Convention on International Civil Aviation, done at Chicago on December 7, 1944;

Desiring to promote an aviation system based on competition among airlines in the marketplace and wishing to encourage scheduled and non-scheduled airlines to develop and implement innovative and competitive services;

Reaffirming their commitment to the Australia New Zealand Closer Economic Relations Trade Agreement done in Canberra in 1983 (ANZCERTA), and to the subsequent further development of Closer Economic Relations (CER) between Australia and New Zealand as reflected in this and other agreements and arrangements, and in particular the Protocol on Trade in Services to the ANZCERTA done in Canberra in 1988;

Building upon the principles contained in the Australia-New Zealand Single Aviation Market Arrangements (SAM);

Recognising that Asia-Pacific Economic Cooperation member economies, through the Bogor Declaration of Common Resolve, agreed to eliminate impediments to economic cooperation and integration and committed themselves to free and open trade in goods, services and investment no later than 2010, and in the case of developing economies no later than 2020;

Recognising that this Agreement applies to both scheduled and non-scheduled services;

Desiring to ensure the highest degree of safety and security in air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Have agreed as follows:

## ARTICLE 1

### Definitions

For the purpose of this Agreement, unless otherwise stated, the term:

- (a) “Aeronautical authorities” means, in the case of New Zealand, the Minister responsible for civil aviation and any person or agency authorised to perform the functions of the said Minister, and in the case of Australia, the Minister responsible for civil aviation and any authority or authorities as notified in writing from time to time to the other Party;
- (b) “Agreement” means this Agreement, its Annex, and any amendments thereto;
- (c) “Air transport” means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
- (d) “Airline” means any air transport operator that meets the requirements of Article 2, or is otherwise authorised to exercise the rights in Article 3;
- (e) “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:
  - (i) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time in force for both Parties; and
  - (ii) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties;
- (f) “Designated airline” means an airline or airlines designated and authorised in accordance with paragraph 2 of Article 2 (Designation, Authorisation and Revocation);
- (g) “Ground handling” includes but is not limited to passenger, cargo and baggage handling, and the provision of catering facilities and/or services;
- (h) “International air transport” means air transport which passes through the air space over the territory of more than one State;
- (i) “Marketing airline” means an airline that provides air transport on an aircraft for which it is not the operating airline;
- (j) “Non-scheduled air transport” means a commercial air transport service performed as other than scheduled air transport;

- (k) “Operating airline” means an airline that provides transport on an aircraft that it operates whether owned or operated through lease arrangements;
- (l) “SAM airline” means an airline authorised in accordance with paragraph 4 or 6 of Article 2 (Designation, Authorisation and Revocation);
- (m) “Scheduled air transport” means a series of flights performed by aircraft for the transport of passengers, cargo and mail between two or more points, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open for use by members of the public;
- (n) “Slot” means the right to schedule an aircraft movement at an airport;
- (o) “Tariff” means any price, fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transport, including transport on an intra-or interline basis, charged by airlines, including their agents, and the conditions governing the availability of such price, fare, rate or charge;
- (p) “Territory” and “Stop for non-traffic purposes” have the meaning respectively assigned to them in Articles 2 and 96 of the Convention provided that, in the case of New Zealand, the term “territory” shall exclude Tokelau; and
- (q) “User charge” means a charge made to airlines by a service provider for the provision of airport, airport environmental, air navigation and aviation security facilities, for aircraft, their crews, passengers and cargo.

## ARTICLE 2

### Designation, Authorisation and Revocation

#### DESIGNATED AIRLINES

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transport in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels. A designated airline may be either an operating airline or a marketing airline or both.

2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorisations and technical permissions, the other Party shall grant appropriate authorisations and permissions with minimum procedural delay, provided that:

- (a) the airline is incorporated and has its principal place of business in the territory of the Party designating the airline;
- (b) effective control of that airline is vested in the Party designating the airline, nationals of that Party, or both;
- (c) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally applied to the operation of international air transport by the Party considering the application or applications;
- (d) the airline holds the necessary operating permits;
- (e) the Party designating the airline is maintaining and administering the standards set forth in Article 5 (Safety) and Article 6 (Aviation Security).

#### SAM AIRLINES

3. There shall be no limit on the number of SAM airlines that may be authorised to conduct air transport in accordance with the rights set out in this Agreement. A SAM airline may or may not be a designated airline. A SAM airline may be either an operating airline or a marketing airline or both.

4. Upon receipt of applications from a SAM airline, in the form and manner prescribed by the Party to whom the application is addressed, the Parties shall grant without delay the appropriate operating authorisation and technical permission for the conduct of air transport as a SAM airline, provided that:

- (a) the airline is majority owned and effectively controlled by nationals of either or both Parties; and

- (b) the airline has, as members of its board, at least a two-thirds majority of nationals of either or both Parties; and
- (c) the airline has, as chairperson of its board, a national of either Party; and
- (d) the airline has its head office in the territory of either Party; and
- (e) the airline has its operational base in the territory of either Party; and
- (f) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally applied to the operation of air transport by the Party considering the application or applications; and
- (g) the airline holds the necessary operating permits; and
- (h) the standards set forth in Article 5 (Safety) and Article 6 (Security) are being maintained.

5. The aeronautical authorities of each Party shall notify the aeronautical authorities of the other Party in writing when they authorise a SAM airline to conduct air transport under this Agreement.

6. Notwithstanding anything set out in paragraph 4 (a) to (e) of this Article, the aeronautical authorities of the Parties may jointly approve an airline as a SAM airline.

#### GENERAL PROVISIONS

7. Either Party may withhold, revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Party or a SAM airline at any time where the conditions of paragraph 2 or paragraph 4 respectively of this Article are not met, or if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

8. Unless immediate action is essential to prevent further non-compliance with sub-paragraph 2(d) or 2(e), or sub-paragraph 4(g) or 4(h) of this Article, the rights established in paragraph 7 of this Article shall be exercised only after consultation with the other Party.

9. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline in accordance with the provisions of Article 5 (Safety) or Article 6 (Aviation Security) of this Agreement.

## **ARTICLE 3**

### **Grant of Rights**

Each Party grants to the airlines of the other Party and to SAM airlines the following rights for the conduct of air transport:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes; and
- (c) in accordance with the Annex to this agreement, the right to make stops in its territory for the purpose of taking up and discharging traffic.

## **ARTICLE 4**

### **Application of Laws**

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.
2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo of the other Party's airlines.
3. Neither Party shall give preference to its own or any other airline over an airline of the other Party engaged in similar international air transport in the application of its entry, clearance, aviation security, immigration, passports, customs and quarantine, postal and similar regulations.
4. Passengers, baggage and cargo in direct transit through the territory of either Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

## ARTICLE 5

### Safety

1. Each Party shall recognise as valid, for the purposes of operating the air transport provided for in this Agreement, certificates of airworthiness, certificates of competency and licences issued or validated by the other Party that are still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognise as valid for the purpose of flights undertaken pursuant to rights granted under Article 3 (Grant of Rights), certificates of competency and licences granted to or validated for its own nationals by the other Party.

2. Each Party may request consultations at any time concerning the safety standards maintained by the other Party including, but not limited to, the safety standards relating to aeronautical facilities, aircrews, aircraft and their operation. Such consultations shall take place within thirty (30) days of that request.

3. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Party shall notify the other Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Party shall take appropriate corrective action. Failure by the other Party to take appropriate action within a reasonable time, or in any case within fifteen (15) days, shall be grounds for the application of paragraph 7 of Article 2 (Designation, Authorisation and Revocation) of this Agreement.

4. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the airline(s) of one Party on services to or from the territory of another Party may, while within the territory of the other Party, be made the subject of any examination by the authorised representatives of the other Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

5. If any such ramp inspection or series of ramp inspections gives rise to:

(a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention; or

(b) serious concerns that there is a lack of effective maintenance and administration of the safety standards established at that time pursuant to the Convention;

the Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or



licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

6. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by an airline(s) of one Party in accordance with paragraph 4 above is denied by the representative of that airline(s) the other Party shall be free to infer that serious concerns of the type referred to in paragraph 5 above arise and draw the conclusions referred to in that paragraph.

7. Each Party reserves the right to suspend or vary the operating authorisation of an airline(s) of the other Party immediately in the event the first Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access to a ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

8. Any action by one Party in accordance with paragraphs 3 or 7 above shall be discontinued once the basis for the taking of that action ceases to exist.

## ARTICLE 6

### Aviation Security

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988, and any other multilateral agreement governing civil aviation security binding upon the parties.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to security of civil aviation.

3. The Parties shall act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and set out in Annexes to the Convention on International Civil Aviation to the extent that such security provisions and requirements are applicable to the Parties.

4. The Parties shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

5. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraphs 3 and 4 above required by the other Party for entry into, departure from, or while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat thereof as rapidly as possible commensurate with minimum risk of life.

7. With regard to aviation security, the aeronautical authorities of either Party may request immediate consultations with the aeronautical authorities of the other Party.

8. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the aeronautical authorities of the first Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds for the application of paragraph 7 of Article 2 (Designation, Authorisation and Revocation) of this Agreement. When required by an emergency, a Party may take action under paragraph 9 of Article 2 (Designation, Authorisation and Revocation) prior to the expiry of fifteen (15) days. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Party with the security provisions of this Article.

## **ARTICLE 7**

### **User Charges**

1. Each Party shall encourage those responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services to levy charges on the basis that they:
  - (a) are reasonable, non discriminatory and equitable;
  - (b) are only levied on airlines for facilities or services used; and
  - (c) may reflect but should not exceed the full cost to the competent charging authorities or bodies of providing the facilities used.
  
2. Increased or new charges should only follow adequate consultation between the competent charging authorities and the airlines of each Contracting Party. Reasonable notice of any proposals for changes in user charges should be given to users to enable them to express their views before changes are made. The Parties shall also encourage the exchange of such information as may be necessary to permit an accurate assessment of the reasonableness of, justification for and apportionment of the charges in accordance with the principles of this Article.

## **ARTICLE 8**

### **Statistics**

1. The aeronautical authorities of one Party may require an airline of the other Party to provide statements of statistics related to the traffic carried by that airline.
2. The aeronautical authorities of each Party may determine the nature of the statistics required to be provided by airlines under the above paragraph, and shall apply these requirements on a non-discriminatory basis.

## ARTICLE 9

### Customs Duties and Charges

1. Aircraft operated in international air transport by the airlines of each Party shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities. Component parts and normal airborne equipment for the repair, maintenance and servicing of such aircraft shall be similarly exempt.

2. The following items shall also be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Party into the territory of the other Party or supplied, within reasonable limits, to an airline of one Party in the territory of the other Party. These exemptions shall apply even when these supplies are to be used on any part of a journey performed over the territory of the other Party in which they have been taken on board:

- (a) aircraft stores (including but not limited to such items as food, beverages and tobacco) whether introduced into or taken on board in the territory of the other Party;
- (b) fuel, lubricants (including hydraulic fluids) and consumable technical supplies;
- (c) spare parts including engines;

provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transport by the designated airline concerned.

3. The exemptions provided by this Article shall not extend to charges based on the cost of services provided to the airlines of a Party in the territory of the other Party.

4. The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraphs 1 and 2 of this Article retained on board the aircraft operated by the airlines of one Party may be unloaded in the territory of the other Party only with the approval of the Customs authorities of that territory. Aircraft stores intended for use on the airlines' services may, in any case be unloaded. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Party.

5. The exemptions provided for by this Article shall also be available in situations where the airline or airlines of one Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Party of the items

specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such relief from such other Party.

## **ARTICLE 10**

### **Tariffs**

1. Each Party shall allow each airline to determine its own tariffs for the transport of traffic pursuant to this Agreement.
2. Tariffs charged by airlines shall not be required to be filed with the aeronautical authorities of either Party.



## **ARTICLE 11**

### **Capacity**

1. The airlines of both Parties, in operating or holding out air transport pursuant to this Agreement, shall have the right to determine the frequency and capacity they offer based upon commercial considerations, in accordance with paragraph 2 of this Article.
2. Consistent with the right specified in paragraph 1, the Parties shall not unilaterally restrict the operations of the airlines of the other, except according to the terms of this Agreement or by such uniform conditions as may be contemplated by the Convention.

## ARTICLE 12

### Commercial Opportunities

1. The airlines of each Party, in operating or holding out air transport pursuant to this Agreement, shall have the right to:

- (a) enter into code share, blocked space or other cooperative marketing arrangements with any other airline, including airlines of third parties, as the marketing and/or operating airline, provided only that the airlines hold the appropriate authority or authorities to conduct air transport on the routes or segments concerned, and in accordance with paragraph 2 of this Article;
- (b) establish offices in the territory of the other Party for the promotion, sale and management of air transport;
- (c) engage in the sale and marketing of air transport in the territory of the other Party directly and, at its discretion, through its agents or intermediaries, using its own transport documents;
- (d) conduct air transport using aircraft (or aircraft and crew) leased from any company, including other airlines, provided only that the operating aircraft and crew meet the applicable operating and safety standards and requirements; and
- (e) use the services and personnel of any other organisation, company or airline operating in the territory of the other Party.

2. The airlines of each Party will, when holding out air transport for sale, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the transport and with which airline or airlines the purchaser is entering into a contractual relationship.

3. The absence of an understanding between either Party and a third party, permitting cooperative marketing arrangements with airlines and carriers of the third party, will not preclude the exercise of the entitlement set out in paragraph 1(a) of this Article by the airlines of either Party.

4. The airlines of each Party, including those not designated or authorised under this Agreement, may establish off line offices in the territory of the other Party for the promotion and sale of air transport.

5. In accordance with the laws and regulations relating to entry, residence and employment of the other Party, a Party may bring in and maintain in the territory of the other Party those of their own managerial, sales, technical, operational and other specialist staff which the airline reasonably considers necessary for the provision of air transport. Consistent with such laws and regulations, each Party shall, with the minimum of delay, grant the necessary employment authorisations, visas or other similar documents to the representatives and staff referred to in this paragraph.

6. The airlines of each Party shall have the right to sell air transport, and any person shall be free to purchase such transport, in local or freely convertible currencies. Each airline shall have the right to convert its funds into any freely convertible currency and to transfer them from the territory of the other Party at will. Subject to the national laws and regulations and policy of the other Party, conversion and transfer of funds obtained in the ordinary course of its operations shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.

7. The airlines of each Party shall have the right at their discretion to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency, or provided this accords with local currency regulations, in freely convertible currencies.

8. All of the rights specified in paragraphs 1 to 7 of this Article shall apply equally to marketing and operating airlines.

9. Each airline shall have the right to perform its own ground-handling in the territory of the other Party, or contract with an agent of its choice, including any other airlines which perform ground-handling, for such services in whole or in part. Each airline shall also have the right, in the territory of the other Party, to offer its services as a ground-handling agent, in whole or part, to any other airline. These rights shall be subject only to restrictions resulting from considerations of airport safety or security. Where such considerations preclude an airline from performing its own ground-handling or contracting with an agent of its choice for ground-handling services, the Parties shall use their best endeavours to ensure that these services shall be made available to that airline on a basis of equality with all other airlines.

10. Each Party recognises that to give effect to the rights and entitlements embodied in the Agreement, the airlines of each party must have the opportunity to access airports in the territory of the other Party on a fair and equitable basis.

11. Accordingly, with respect to airports in its territory, each Party shall use its best endeavours to ensure that access to slots by the airlines of the other Party will be available on terms and conditions which are no less favourable than those applicable to any other airlines operating similar types of services.

12. The provisions of paragraph 11 shall apply, subject to any laws or regulations of the Parties for the allocation of slots at airports in their territory.

13. Either Party may require airlines providing non-scheduled air transport to meet other domestic requirements which are not inconsistent with the provisions of this Agreement, including those relating to protection of consumers, before issue of operating authorisations.

## **ARTICLE 13**

### **Right of Establishment and Inward Investment**

Each Party shall allow the airlines of the other Party to establish and operate an airline for the purpose of operating domestic air transport wholly within the territory of the other Party with aircraft registered in the territory of the other Party, subject to the application of national laws and regulations of the other Party.

## ARTICLE 14

### Competition

1. The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines of both Parties. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines (including block-space, code-share and other joint service agreements) from the application of its domestic competition law. This does not obligate a Party or its competition authority to provide a reciprocal exemption.

2. Without limiting the application of competition and consumer law by either Party, if the aeronautical authorities of either Party consider that the airlines of either Party are being subjected to discrimination or unfair practices in the territory of either Party, they may give notice to this effect to the aeronautical authorities of the other Party. Consultations between the aeronautical authorities shall be entered into as soon as possible after notice is given unless the first Party is satisfied that the matter has been resolved in the meantime.

3. In undertaking the consultations outlined in this Article the Parties shall:

- (a) coordinate their actions with the relevant authorities;
- (b) consider alternative means which might also achieve the objectives of action consistent with general competition and consumer law; and
- (c) take into account the views of the other Party and the other Party's obligations under other international agreements.

4. Notwithstanding anything in paragraphs 1 to 3 above this Article does not preclude unilateral action by the airlines or the competition authorities of either Party.

## **ARTICLE 15**

### **Intermodal Services**

1. Notwithstanding any other provision of this Agreement, airlines and indirect providers of passenger transport of each Party shall be permitted, without restriction, to employ in connection with air transport any surface transport for passengers to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities. Airlines may elect to perform their own surface transport or, at their discretion, to provide it through arrangements with other surface carriers, including surface transport operated by other airlines and indirect providers of passenger air transport. Such intermodal passenger services may be offered at a simple, through price for the air and surface transport combined, provided that passengers are informed as to the facts of this transport.

2. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transport of the Parties shall be permitted, without restriction, to employ in connection with air transport any surface transport for cargo to or from any points in the territories of the Parties or third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Access to airport customs processing and facilities shall be provided for such cargo, whether moving by surface or by air. Airlines may elect to perform their own surface transport or to provide it through arrangements with other surface carriers, including surface transport operated by other airlines and indirect providers of cargo air transport. Such intermodal cargo services may be offered at a single, through price for the air and surface transport combined, provided that shippers are informed as to the facts concerning such transport.

## **ARTICLE 16**

### **Consultations**

1. Either Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement.
2. Subject to Articles 2 (Designation, Authorisation and Revocation), 5 (Safety), 6 (Aviation Security) and 14 (Competition), such consultations, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually decided.



## **ARTICLE 17**

### **Amendment of Agreement**

1. This Agreement may be amended or revised by agreement in writing between the Parties.
2. Any amendment or revision shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been met.
3. If a multilateral convention concerning air transport comes into force in respect of both Parties, this Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

## ARTICLE 18

### Settlement of Disputes

1. Any dispute relating to the interpretation or application of this Agreement which cannot be settled by negotiations between the Parties, either through discussion, correspondence or the use of diplomatic channels, shall, at the request of either Party, be submitted to an arbitral tribunal.

2. Within a period of thirty (30) days from the date of receipt by either Party from the other Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Party shall nominate an arbitrator. Within a period of sixty (60) days from the appointment of the arbitrator last appointed, the two arbitrators shall appoint a president who shall be a national of a third State. If within sixty (60) days after one of the Parties has nominated its arbitrator, the other Party has not nominated its own or, if within sixty (60) days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Party may request the President of the Council of the International Civil Aviation Organisation to appoint an arbitrator or arbitrators as the case requires. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The tribunal, once formed, may recommend interim relief measures pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.

4. Except as otherwise determined by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days after the tribunal is fully constituted. Replies shall be due within sixty (60) days. The tribunal shall hold a hearing at the request of either Party, or at its discretion, within fifteen (15) days after replies are due.

5. The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing, or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

6. The Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

7. Each Party shall, to the degree consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

8. The expenses of arbitration under this Article shall be shared equally between the Parties.

9. If and for so long as either Party fails to comply with a decision under paragraph 7 of this Article, the other Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Party in default.

## **ARTICLE 19**

### **Termination**

1. Either Party may at any time give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation (ICAO). The Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of notice by the Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

2. In default of acknowledgement of receipt of a notice of termination by the other Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

## **ARTICLE 20**

### **Registration with ICAO**

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organisation.

## ARTICLE 21

### Entry into Force

1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been satisfied.

2. Upon entry into force, this Agreement shall supersede the Air Services Agreement between New Zealand and Australia, done in Wellington on 25 July, 1961 (as amended).

IN WITNESS THEREOF, the undersigned, duly authorised thereto by their respective governments, have signed this Agreement.

DONE at Auckland, this      day of August, 2002, in duplicate in the English language.

For the Government of  
New Zealand

For the Government of  
Australia

## ANNEX

### Section 1

#### ROUTE SCHEDULE

- A. Routes for the airline or airlines designated by the Government of New Zealand
1. From points behind New Zealand via New Zealand, and any intermediate point(s), to any point(s) in Australia, and beyond.
  2. For all-cargo services, between Australia and any point or points.
- B. Routes for the airline or airlines designated by the Government of Australia
1. From points behind Australia via Australia, and any intermediate point(s), to any point(s) in New Zealand, and beyond.
  2. For all-cargo services, between New Zealand and any point or points.
- C. Routes for SAM Airlines
1. Between points in Australia and/or New Zealand.

## Section 2

### OPERATIONAL FLEXIBILITY

1. Subject to paragraph 2, the airlines of each Party and SAM airlines may, on any or all flights and at the option of each airline:

- (a) between points in the territory of the other Party exercise own stopover rights only;
- (b) market code share services within the territory of the other Party to points behind the gateway point provided that such services form part of a through international journey;
- (c) serve points on the routes in any combination and in any order;
- (d) omit stops at any point or points;
- (e) combine different flight numbers within one aircraft operation;
- (f) transfer traffic from any aircraft to any other aircraft at any point on the route; and
- (g) serve points on the routes with or without change of aircraft or flight number and hold out and advertise such transport to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement provided that, with the exception of all-cargo services, services provided by a designated airline serve a point in the territory of the Party designating the Airline.

2. In addition to the rights set out in paragraph 1 above, each Party grants to SAM airlines the right to conduct air transport within the territory of both Parties, including the right to carry all forms of domestic traffic on the sectors of international air services performed within such territory.



### **Section 3**

#### **CHANGE OF GAUGE**

Subject to it performing the type of air transport for which it is authorised under this Agreement, on any sector or sectors of the routes in Section 1 of this Annex, any airline may perform air transport, including under co-operative marketing arrangements with other airlines, without any limitation as to change at any point or points on the route, in the type or number of aircraft operated.