

## MEMORANDUM OF CONSULTATIONS

Delegations representing Australia and the United States of America met in Washington on February 12-14, 2008, to discuss their civil aviation relationship. The delegation lists are found at Attachment A. The discussions proceeded in a friendly and constructive manner, consistent with the close relationship between the two countries.

1. The delegations reached *ad referendum* agreement on, and initialed the text of, an Agreement (the "Agreement", appended as Attachment B). The delegations intend to submit the draft Agreement to their respective authorities for approval, with the goal of its entry into force in the near future.

2. With respect to Article 3 (Designation and Authorization), paragraph 1, of the Agreement, the delegations noted that designations are not required for charter international air transportation operations or for airlines exercising the rights set forth in Article 2 (Grant of Rights), paragraphs 1 and 2.

3. In response to an inquiry from the Australian delegation regarding U.S. law on ownership and control of U.S. airlines, the U.S. delegation explained that ownership by Australian nationals of the equity of a U.S. airline is permitted, subject to two limitations. First, ownership by all foreign nationals of more than 25 percent of a corporation's voting equity is prohibited. Second, actual control of a U.S. airline by foreign nationals is also prohibited. (See 49 U.S.C. 40102(2) and (15), 41101 and 41102.) Subject to the overall 25 percent limitation on foreign ownership of voting equity, ownership by Australian nationals of as much as 25 percent of the voting equity and/or as much as 49.9 percent of the total equity of a U.S. airline would not be deemed, of itself, to constitute control of that airline. All ownership and control determinations are made on a case-by-case basis.

4. In response to an inquiry from the U.S. delegation regarding Australian law on ownership and control of Australian airlines, the Australian delegation explained that ownership by U.S. nationals of an Australian airline is permitted in line with Australia's laws and regulations, as follows:

- Subject to government approval, foreign persons are allowed to own up to 100% of an Australian domestic airline.
- For Australian international airlines other than Qantas, foreign ownership levels are set out in Section 11A of the *Air Navigation Act 1920*, which indicates, subject to government approval, that foreign persons can have relevant interests (as defined in section 608 of the *Corporations Act 2001*) in shares in an Australian international airline that represent in total no more than 49% of the total value of the issued share capital of that airline.
- For Qantas, foreign ownership levels are set out in the *Qantas Sale Act 1992* which indicates that:

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- Foreign persons can have relevant interests in shares in Qantas that represent in total no more than 49% of the total value of the issued share capital of Qantas;
- Foreign airlines can have relevant interests in shares in Qantas that represent in total no more than 35% of the total value of the issued share capital of Qantas; and
- A single foreign person can have a relevant interest in shares in Qantas that represent no more than 25% of the total value of the issued share capital of Qantas.

The Australian delegation noted that Australia supports the replacement of ownership and control requirements with principal place of business criteria in its bilateral air services agreements. The Australian delegation also noted that it supports and continues to seek full reciprocity in relation to foreign investment in domestic and international airlines.

5. In discussing Article 5 (Application of Laws), the delegations confirmed their understanding that Article 5 is to be applied consistently with the principle of fair and equal opportunity in Article 11 (Fair and Equal Opportunity). They recognized that there may be occasions in which differential treatment among airlines with respect to the application of the laws, regulations, and rules referenced in Article 5 would be justified and consistent with both provisions.

6. The delegations noted that both parties currently undertake “ramp inspections” of aircraft in their territories, as required by their domestic laws. It is their mutual understanding that such ramp inspections are consistent with the provisions of the Agreement.

7. The delegations similarly confirmed their understanding that the conduct by one party of assessments of aviation security measures being implemented in the territory of the other party, as required by the domestic law of the first party or as mutually agreed, would also be consistent with the provisions of the Agreement.

8. With regard to Article 8 (Commercial Opportunities), paragraph 3, the Australian delegation noted that, under Australian law, U.S. carriers are permitted to offer their services as ground-handling agents to other carriers. While acknowledging the U.S. delegation’s explanation that the U.S. Government cannot guarantee equivalent opportunities at U.S. airports, the Australian delegation expressed its desire to see such rights become available for Australian airlines in the United States in the future.

9. With respect to Article 8 (Commercial Opportunities), paragraph 7, the delegations noted that the reference to leasing in that paragraph would encompass the provision of aircraft with or without crew.

10. In response to a question from the Australian delegation, the U.S. delegation explained that U.S. law permits airlines to lease aircraft without crew from

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aircraft leasing companies, but does not permit such companies to provide aircraft with crew.

11. The economic authority that an Australian airline must have from the U.S. Department of Transportation ("DOT") to provide an entire aircraft with crew to a U.S. airline for operations under the U.S. airline's code consists of charter authority and a statement of authorization. The issuance of a statement of authorization requires a DOT finding that the proposed operations are in the public interest. The regulatory analysis would include, but would not necessarily be limited to, whether:

- a safety audit has been conducted by the U.S. airline of the foreign airline
- the country issuing the foreign carrier's Air Operator's Certificate ("AOC") is International Aviation Safety Assessments ("IASA") category 1
- the foreign airline's home country deals with U.S. carriers on the basis of substantial reciprocity
- approval would give rise to competition concerns
- the lease agreement provides that operational control will remain with the lessor carrier
- the regulatory oversight responsibility remains with the lessor's AOC-issuing authority
- approval of the lease will not give an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

12. In discussing code-share operations that may be conducted under the Agreement, the delegations noted their mutual understandings that:

a. one party would not be permitted to withhold permission for an airline of the other Party to market code-share services on flights operated by airlines of third parties on the basis that the third party airlines concerned did not have the right from the first party to carry traffic under the code of the marketing airline;

b. the airlines of each party may market code-share services on domestic flights operated within the territory of the other party provided that the transportation forms part of a through international journey; and

c. the airlines of each party may be required to disclose to customers which airline will be operating each sector of the journey and with which airline or airlines the customer will have a contractual relationship.

13. With respect to the allocation of slots, the delegations affirmed the principle that airlines be accorded a fair and equal opportunity to secure slots.

14. With respect to Article 9 (Customs Duties and Charges), paragraph 2, the Australian delegation explained that Australia currently does not provide an exemption

from national duties and taxes for ground equipment brought into Australia by foreign airlines for use in connection with international air services and not retained on the aircraft. The U.S. delegation noted that the United States provides such exemptions for ground equipment, on the basis of reciprocity, and would accordingly make such an exemption available for Australian airlines should Australia change its law.

15. Both delegations noted that baggage and cargo in direct transit are exempt from customs duties and other similar taxes and that such baggage and cargo may be required to be kept under the supervision or control of the appropriate authorities.

16. The delegations noted that nothing in the Agreement precludes aeronautical authorities from imposing non-discriminatory requirements that airlines provide statistics on the traffic they carry.

17. In response to a question from the U.S. delegation, the Australian delegation explained that Australia does not have restrictions on government procured transportation like the U.S. Fly America Act. In addition, the Australian delegation indicated that it would be interested in obtaining for Australian airlines the benefits of any future relaxation of U.S. policy in the area.

18. With respect to Article 11 (Fair and Equal Opportunity), the two delegations indicated that it was their intent to create a regime allowing free and open competition between scheduled and charter international air services. In response to a question from the U.S. delegation, the Australian delegation affirmed that its government's charter policy in open aviation regimes such as the one that will be established by the Agreement is to allow charter services without charter-specific restrictions, such as on the type of traffic, charter eligibility, the party in which the traffic originates, or the nature of the traffic as one-way or round-trip.

19. The Australian delegation informed the U.S. delegation that "charter" as used in the Agreement has the same meaning as "non-scheduled" under Australian law.

20. With respect to Article 19 (Entry into Force), the delegations indicated the intent that the Agreement also supersede the agreement relating to capacity, effected by an exchange of notes at Washington March 23, 1989, and the Memorandum of Consultations of December 14, 1999, concerning all-cargo transport.

21. The delegations confirmed their intention to develop within twelve months a mutually acceptable dispute settlement provision to be recommended to their respective authorities for approval with the goal of its entry into force as soon as possible.

22. The delegations expressed their shared goal of continuing to open access to international aviation markets. They stated their intention to continue to discuss any developments in the aviation industry and prospects for further liberalization. The Australian delegation indicated that it would seek through these discussions treatment equivalent to that afforded to third parties.

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23. The two delegations expressed their expectation that their aeronautical authorities would permit operations consistent with the terms of the Agreement on the basis of comity and reciprocity pending its entry into force.

**For the delegation of the  
United States of America**



Terri L. Robl

Washington  
February 14, 2008

**For the delegation of Australia**



Stephen Borthwick

**Delegation Lists**

*Australian Government*

Stephen Borthwick  
General Manager, Aviation Markets  
Department of Infrastructure, Transport,  
Regional Development and Local Government

Iain Lumsden  
Director, Bilateral Aviation  
Aviation Markets Branch  
Department of Infrastructure, Transport,  
Regional Development and Local Government

Remo Moretta  
Trade Counselor  
Embassy of Australia

Susan Jabs  
Manager, Tourism Transport Team  
Market Access Group  
Tourism Division  
Department of Resources, Energy and Tourism

*Australian Industry Representatives*

Jane McKeon  
General Manager, Government and International Relations  
Qantas Airways Ltd

Tony Wheelens  
Government Relations Manager  
Virgin Blue – Long Haul

*United States Government*

Terri Robl, Head of Delegation  
Director, Office of Aviation Negotiations  
U.S. Department of State

Viki Limaye-Davis  
Office of Aviation Negotiations  
U.S. Department of State

Kathleen Milton  
Office of the Legal Advisor  
U.S. Department of State

Melinda Lucke  
Australia Desk Officer, Bureau of East Asian and Pacific Affairs  
U.S. Department of State

Paul Gretch  
Director, Office of International Aviation  
U.S. Department of Transportation

Keith Glatz  
Office of International Aviation  
U.S. Department of Transportation

Laura Trejo  
Senior Attorney, Office of International Law  
U.S. Department of Transportation

Eugene Alford  
Office of International Trade Administration  
U.S. Department of Commerce

*U.S. Industry Representatives*

Cecilia Bethke  
Air Transport Association

Diane Peterson  
Airports Council International-North America

David Semanchik  
Air Line Pilots Association

Bob Coffman  
Allied Pilots Association

Paul Doell  
National Air Carrier Association

Michael Korens  
Greater Orlando Aviation Authority

Bradley Rubinstein  
Port Authority of New York and New Jersey

Patrick Murphy  
San Francisco Airport Commission

Michael Wascom  
American Airlines

Dan Weiss  
Continental Airlines and Continental Micronesia

Reagan Highfill  
Delta Airlines

Jeff Morgan  
Northwest Airlines

Jeff Manley  
United Airlines

Dontai Smalls  
United Parcel Service

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*U.S. Observers*

John Bellush, III  
Office of Aviation Negotiations  
U.S. Department of State

Jeffrey Dobson  
U.S. Department of Transportation

Cortney Robinson  
Office of Performance Analysis & Strategy  
FAA-ATO Operations Planning Services

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**ATTACHMENT B**

**AIR TRANSPORT AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF**  
**THE UNITED STATES OF AMERICA**  
**AND**  
**THE GOVERNMENT OF**  
**AUSTRALIA**

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The Government of the United States of America and the Government of Australia (hereinafter, "the Parties");

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to facilitate the expansion of international air transport opportunities;

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

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

Have agreed as follows:

**Article 1**

**Definitions**

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

1. "aeronautical authorities" means, in the case of the United States, the Department of Transportation and in the case of Australia, the Department of Infrastructure, Transport, Regional Development and Local Government, and any person or agency authorized to perform functions exercised by the Department of Transportation or said Department of Infrastructure, Transport, Regional Development and Local Government;
2. "Agreement" means this Agreement, its Annexes, and any amendments thereto;
3. "air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, scheduled, or charter, for remuneration or hire;
4. "airline of a Party" means an airline that is licensed by and has its principal place of business in the territory of that Party;
5. "Convention" means the Convention on International Civil Aviation, done at Chicago December 7, 1944, and includes:
  - a. any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, and
  - b. 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;

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6. "designated airline" means an airline designated and authorized in accordance with Article 3 (Designation and Authorization) of this Agreement;
7. "full cost" means the cost of providing facilities and services, which may include a reasonable charge for administrative overhead;
8. "homeland" means the territory of the Party by which an airline was granted its Air Operator's Certificate (AOC) and in which it has its principal place of business;
9. "international air transportation" means air transportation that passes through the airspace over the territory of more than one State;
10. "ICAO" means the International Civil Aviation Organization;
11. "price" means any fare, tariff, rate, or charge for the carriage of passengers, baggage, or cargo (excluding mail) in international air transportation, including surface transportation in connection with international air transportation, charged by airlines, including their agents, and the conditions governing the availability of such fare, tariff, rate, or charge;
12. "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo, or mail in air transportation;
13. "territory" means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and
14. "user charge" means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

## Article 2

### **Grant of Rights**

Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

1. the right to fly across its territory without landing;
2. the right to make stops in its territory for non-traffic purposes; and
3. the rights otherwise specified in this Agreement.

## Article 3

### **Designation and Authorization**

1. Each Party shall have the right to designate as many airlines as it wishes to conduct scheduled international air transportation 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 and shall state that the airline is authorized to conduct the type of transportation specified in Annex I.

2. Each Party, on receipt of a designation, and of applications from a designated airline of the other Party, or applications from an airline of the other Party intending to operate charter international air transportation, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

a. substantial ownership and effective control of that airline are vested in the other Party, nationals of that Party, or both;

b. the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and

c. the other Party is maintaining and administering the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security).

#### **Article 4**

##### **Revocation of Authorization**

1. Either Party may revoke, suspend, limit, or impose conditions on the operating authorizations or technical permissions of an airline where:
  - a. that airline is not an airline of the other Party under Article 1(4);
  - b. substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both; or
  - c. that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement.
2. Unless immediate action is essential to prevent further noncompliance with subparagraph 1c of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.
3. This Article does not limit the rights of either Party to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 6 (Safety) or Article 7 (Aviation Security).

**Article 5****Application of Laws**

1. The laws, regulations and rules of a Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be complied with by such aircraft upon entering, when departing from, or while within the territory of the first Party.

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 or cargo on 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, crew or cargo of the other Party's airlines.

**Article 6****Safety**

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.

2. Either Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of airlines of that other Party. Such consultations shall take place within forty-five days of a request. 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 at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall

be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action.

3. Each Party reserves the right to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time and to take immediate action, prior to consultations, as to such airline or airlines if the other Party is not maintaining and administering the aforementioned standards and immediate action is essential to prevent further noncompliance. Any action taken in accordance with this paragraph shall be discontinued promptly upon compliance by the other Party with the safety provisions of this Article.

### Article 7

#### **Aviation Security**

1. The Parties affirm that their obligation to each other 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 Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal February 24, 1988, as well as with any other convention relating to the security of civil aviation to the degree in force for both 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, of their passengers and crew, and of airports and air

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navigation facilities, and to address any other threat to the security of civil air navigation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, operators of aircraft that 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.

4. Each Party agrees to observe the security provisions required by the other Party for entry into, for departure from, and while within the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as 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 special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

6. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days. Any action taken in accordance with this paragraph shall be discontinued promptly upon compliance by the other Party with the security provisions of this Article.

**Article 8****Commercial Opportunities**

1. The airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation and to use the services and personnel of any organization, company or airline operating in the territory of the other Party which is allowed to perform such services.
2. The airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation. Consistent with such laws and regulations, each Party intends to act expeditiously in processing the necessary employment authorizations and other documents for staff referred to in this paragraph.
3. Each airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at the airline's option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground-handling services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.
4. An airline of a Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
5. Each airline shall have the right to convert and remit to its country and, except where inconsistent with generally applicable law or regulation, any other country or countries of its choice, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without

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restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

6. The airlines of each Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies according to local currency regulation.

7. In operating or holding out the authorized services under this Agreement, any airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing, or leasing arrangements, with

- a) an airline or airlines of either Party;
- b) an airline or airlines of a third country; and
- c) a surface (land or maritime) transportation provider of any country;

provided that all participants in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

8. Airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface (land or maritime) transportation for cargo to or from any points in the territories of the Parties or in third countries, including to and from all airports with customs facilities, and to transport cargo in bond or otherwise subject to customs control under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

**Article 9****Customs Duties and Charges**

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (a) imposed by the national authorities, and (b) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees, and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

a. aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

b. spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an airline of the other Party used in international air transportation;

c. fuel, lubricants, and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and

d. promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these materials are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. 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.

4. The exemptions provided by this Article shall also be available where the airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

## Article 10

### **User Charges**

1. Each Party shall take all steps within its power to ensure that bodies responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services levy charges on airlines only to the extent the charges are just, reasonable, not unjustly discriminatory, and equitably apportioned amongst categories of users.

2. Reasonable charges reflect, but do not exceed, the full cost to the competent charging authorities of providing the facilities and services. These charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made should be provided on an efficient and economic basis. For charges to be not unjustly discriminatory, they should be levied on foreign airlines on terms no less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

3. The Parties shall encourage the exchange of such information between the charging bodies and the airlines as may be necessary to permit a full and timely assessment of the charges in accordance with paragraphs 1 and 2 of this Article.

4. Increased or new charges should only follow adequate consultations between the charging bodies and the airlines. 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.
5. Neither Party shall be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

### Article 11

#### **Fair and equal opportunity**

1. Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.
2. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers under Annex I or Annex II based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
3. Neither Party shall impose on the other Party's airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency, or traffic that would be inconsistent with the purposes of this Agreement.
4. Any requirements for the filing of schedules, applications for programs for charter flights, or operational plans by airlines of the other Party shall be on a non-discriminatory basis and imposed only when necessary to fulfill requirements under the domestic law of either Party. If a Party requires filings, it shall minimize

the administrative burdens of filing requirements and procedures on air transportation intermediaries and on airlines of the other Party.

## **Article 12**

### **Pricing**

1. Each Party shall allow prices for air transportation to be established by airlines of both Parties based upon commercial considerations in the marketplace.
2. Unless required by national laws and regulations, prices charged by airlines of the Parties shall not be required to be filed with the aeronautical authorities of either Party.

## **Article 13**

### **Competition**

1. The Parties recognize that competition among airlines in the U.S.-Australia market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not to benefit individual competitors.
2. The Parties recognize that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results. The Parties agreed that their respective aviation authorities should continue to cooperate on competition matters, taking into account the different responsibilities, competencies and procedures of the authorities.

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**Article 14****U.S. Government Procured Transportation**

Effective October 1, 2008, Australian airlines shall have the right to transport passengers and cargo on scheduled and charter flights for which a U.S. Government civilian department, agency, or instrumentality (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government, or (2) provides the transportation to or for a foreign country or international or other organization without reimbursement, and that transportation is (a) between any point in the United States and any point in Australia, except - with respect to passengers only - between points for which there is a city-pair contract fare in effect, or (b) between any two points outside the United States. This paragraph shall not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department.

**Article 15****Consultations**

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

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**Article 16**

**Amendments**

This Agreement may be amended in writing by agreement of both Parties. Any amendment to this Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of the amendment.

**Article 17**

**Termination**

Either Party may, at any time, give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Parties before the end of this period.

**Article 18**

**Registration with ICAO**

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

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**Article 19**

**Entry into Force**

This Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of the Agreement.

Upon entry into force, this Agreement shall supersede the Air Transport Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia, signed at Washington December 3, 1946, as amended.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, in two originals.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF  
AUSTRALIA:

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ANNEX I

Scheduled Air Transportation

Section 1

Routes

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

1. Routes for the airline or airlines designated by the Government of the United States:
  - a. From points behind the United States via the United States and intermediate points to a point or points in Australia and beyond.
  - b. For all-cargo service or services, between Australia and any point or points.
2. Routes for the airline or airlines designated by the Government of Australia:
  - a. From points behind Australia via Australia and intermediate points to a point or points in the United States and beyond.
  - b. For all-cargo service or services, between the United States and any point or points.

Section 2

Operational Flexibility

1. Each designated airline of a Party may, on any or all flights and at its option:
  - a. operate flights in either or both directions;

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- b. combine different flight numbers within one aircraft operation;
- c. serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order;
- d. omit stops at any point or points;
- e. transfer traffic from any of its aircraft to any of its other aircraft at any point;
- f. serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
- g. make stopovers at any points whether within or outside the territory of either Party;
- h. carry transit traffic through the other Party's territory; and
- i. combine traffic on the same aircraft regardless of where such traffic originates;

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, the transportation is part of a service that serves a point in the territory of the Party which has designated the airline.

2. On any segment or segments of the routes above, any airline of a Party may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party which has designated the airline and, in the inbound direction, the transportation to the territory of the Party which has designated the airline is a continuation of the transportation from beyond such point.

3. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

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## ANNEX II

## Charter Air Transportation

Section 1

A. Airlines of each Party shall have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

1. Between any point or points in its homeland and any point or points in the territory of the other Party; and
2. Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

B. In the performance of services covered by this Annex, an airline of either Party may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve behind, intermediate, and beyond points and points in the territories of the Parties in any combination and in any order;
4. omit stops at any point or points;
5. transfer traffic from any of its aircraft to any of its other aircraft at any point;

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6. serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
7. make stopovers at any points whether within or outside the territory of either Party;
8. carry transit traffic through the other Party's territory; and
9. combine traffic on the same aircraft regardless of where such traffic originates;

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 cargo charters, the transportation is part of a service that serves a point in the homeland of the airline.

C. On any segment or segments of the routes above, any airline of a Party may perform charter international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that, with the exception of cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the homeland of the airline and, in the inbound direction, the transportation to the homeland of the airline is a continuation of the transportation from beyond such point.

D. Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

## Section 2

Nothing contained in this Agreement shall limit the rights of a Party to require airlines of both Parties to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Section 3

Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party, when operating charter international air transportation, the rights to take on board, in the territory of the other Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

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