

## MEMORANDUM OF CONSULTATIONS

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Delegations representing Switzerland and the United States of America met in Ittigen on 17 and 18 July, 2008, to review their aviation relations and to evaluate new avenues for developing and liberalizing the regulatory framework for air services between their two countries. A list of the two delegations is attached hereto (Attachment I). In the course of the negotiations, which were held in a cordial atmosphere reflecting the excellent relations between the competent authorities, the two delegations reached the following understanding:

1. After discussions, the delegations reached, ad referendum, agreement on and initialed the text of a new Air Transport Agreement (referred to as ATA hereinafter) in the English language (Attachment II).

The delegations intend to recommend to their respective governments that they sign the ATA at the earliest possible date.

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

2. With regard to Article 6 (Safety), the delegations noted that both parties currently undertake "ramp inspections" of aircraft in their territories. It is their mutual understanding that such ramp inspections are consistent with the provisions of the ATA.
3. The Swiss side asked for clarification of the phrase "physical constraints resulting from considerations of airport safety" in paragraph 3 of Article 8 (Commercial Opportunities) as used in the context of "ground-handling". The U.S. side confirmed that this phrase includes specific constraints on available space or operational capacity arising from congestion which make it impossible, while maintaining safe operation of the airport, to implement self-handling.
4. With respect to paragraph 2 of Article 12 (Pricing), both delegations expressed the expectation that, if access to pricing information is required, the requesting aeronautical authorities would seek to minimize the administrative burden on airlines of providing the requested information.
5. a) In response to a question raised by the Swiss delegation, the U.S. delegation explained that, as provided by General Services Administration (GSA) regulation, the carriage of U.S. Government financed air transportation (Fly

America traffic) by a U.S. carrier includes transportation sold under the code of a U.S. carrier pursuant to a code share arrangement, but carried on an aircraft operated by a foreign air carrier.

b) The U.S. delegation explained that under Annex II to the ATA, and in the absence of a city-pair contract awarded by the U.S. General Services Administration, a U.S. Government employee or other individual whose transportation is paid for by the U.S. Government (other than an employee, military member, or other individual whose transportation is paid for by the U.S. Department of Defense or military department) may book a flight, including on an airline of Switzerland, between the U.S. and Switzerland, or between any two points outside the United States, that, at the lowest cost to the Government, satisfies the traveler's needs. The U.S. delegation noted further that the city pairs for which contracts are awarded change from fiscal year to fiscal year. A U.S. Government department, agency or instrumentality, other than the Department of Defense or a military department, may ship cargo on a flight, including on an airline of Switzerland, between the U.S. and Switzerland, or between any two points outside the United States, that, at the lowest cost to the Government, satisfies the agency's needs.

c) The Swiss delegation explained that Switzerland does not have a similar program to Fly America.

6. a) The Swiss delegation raised the issue of potential Swiss investment in airlines of third countries and potential third-country investment in airlines of Switzerland in light of the provisions on substantial ownership and effective control found in bilateral air transport agreements between the United States and third countries. The U.S. delegation replied that such provisions are included in virtually all U.S. bilateral air transport agreements, and described the general practice of the U.S. Department of Transportation to waive the ownership and control requirements, particularly for carriers from U.S. Open Skies partners, in cases where the Department determines that:
- i) such waiver would not be inimical to U.S. aviation interests; and
  - ii) the foreign carrier otherwise meets the standard licensing requirements reflected in the designation and/or authorization article(s) of the relevant agreement.

The U.S. delegation also noted that the Department does not withhold such waivers in order to limit competition or give economic advantage to U.S. carriers.

- b) The U.S. delegation explained its recent proposal for negotiation of a multilateral convention on foreign investment in airlines. The U.S. delegation intends to share a draft text with Switzerland in the fall. The Swiss delegation expressed its interest in such initiative and its willingness to favorably consider any further steps in this regard.
7. The delegations noted the importance of the international consensus in aviation environmental matters within the framework of the International Civil Aviation Organization (ICAO). In this connection, they underscored the significance of the unanimous agreement reached at the 35th ICAO Assembly, which was reaffirmed by the 36th Assembly, on aircraft noise and local emissions issues (Resolution A35-5). Both sides are committed to respecting that Resolution in full. In accordance with this Resolution, both sides are committed to applying the "balanced approach" principle to measures taken to manage the impact of aircraft noise (including restrictions to limit the access of aircraft to airports at particular times) and to ensuring charges for aircraft engine emissions at airport level are based on the costs of mitigating the environmental impact of those aircraft engine emissions, in compliance with ICAO Documents 9884 and 9082.
  8. In response to a question raised by the Swiss delegation, the U.S. delegation explained the U.S. regulations applicable to business aviation operators.

Ittigen, 18 July 2008.

For the delegation of Switzerland:



Mr. Raymond Cron

For the delegation of the United States  
of America:



Mr. John Byerly

**AVIATION TALKS**  
**SWITZERLAND - UNITED STATES OF AMERICA**  
**ITTIGEN 17 – 18 JULY 2008**

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LIST OF DELEGATION:

**SWISS DELEGATION**

<b>Mr. Raymond CRON</b>	Director General Federal Office of Civil Aviation (FOCA)
<b>Mr. Urs HALDIMANN</b>	Head International and Legal Affairs Federal Office of Civil Aviation (FOCA)
<b>Mrs. Laurence FONTANA JUNGO</b>	Chief Negotiator Air Services Agreements International and Legal Affairs Federal Office of Civil Aviation (FOCA)
<b>Mr. Frédéric ROCHERAY</b>	Lawyer International and Legal Affairs Federal Office of Civil Aviation (FOCA)
<b>Mr. Jacques DUCREST</b>	Head of Section for Transport, Energy and Health Directorate of Political Affairs Federal Department of Foreign Affairs
<b>Prof. Dr. Regula DETTLING-OTT</b>	Managing Director, International Relations and Government Affairs SWISS International Air Lines Ltd
<b>Mr. Ignazio STRANO</b>	Director, Head of External Relations & Global Alliances SWISS International Air Lines Ltd
<b>Mrs. Domenica ROSATO</b>	Key Account Manager Airline Affairs UNIQUE (Zurich) Airport
<b>Mrs. Helene NIEDHART</b>	CEO CAT-Aviation
<b>Mr. Michael WIDMER</b>	Lawyer CAT-Aviation

**AVIATION TALKS**  
**SWITZERLAND - UNITED STATES OF AMERICA**  
**ITTIGEN 17 – 18 JULY 2008**

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LIST OF DELEGATION

**U.S. DELEGATION**

<b>Mr. John BYERLY</b>	Head of Delegation Deputy Assistant Secretary for Transportation Affairs U.S. Department of State
<b>Mr. Matthew FINSTON</b>	International Transportation and Commercial Officer Office of Aviation Negotiations U.S. Department of State
<b>Ms. Kathleen MILTON</b>	Attorney-Adviser Office of the Legal Adviser U.S. Department of State
<b>Ms. Leslie FRERIKSEN</b>	Economic Officer U.S. Embassy, Bern
<b>Ms. Mary STREET</b>	Assistant Director Office of International Aviation U.S. Department of Transportation
<b>Mr. Brian HEDBERG</b>	Aviation Negotiator Office of International Aviation U.S. Department of Transportation
<b>Mr. Lawrence MYERS</b>	Attorney-Adviser Office of the General Counsel U.S. Department of Transportation

AIR TRANSPORT AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF SWITZERLAND

The Government of the United States of America and the Government of Switzerland (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 facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

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

Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on 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, or its successor, and in the case of Switzerland, the Federal Office of Civil Aviation and any person or agency authorized to perform the functions exercised by the said Federal Office of Civil Aviation;
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 any airline that has received its Air Operator's Certificate (AOC) from and has its principal place of business in the territory of that Party;

5. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 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 effective for both Parties;

6. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;

7. "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;

8. "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, if applicable, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate, or charge;

9. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo, and/or mail in air transportation;

10. "Territory" means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and

11. "User charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities.

## Article 2

### Grant of Rights

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

a. the right to fly across its territory without landing;

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b. the right to make stops in its territory for non-traffic purposes; and

c. the rights otherwise specified in this Agreement.

2. Nothing in this Article 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, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

### Article 3

#### Authorization

Each Party, on receipt of applications from an airline of the other Party, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided that:

a. i. for an airline of the United States, substantial ownership and effective control of that airline are vested in the United States, U.S. nationals, or both;

ii. for an airline of Switzerland, substantial ownership and effective control of that airline are vested in Switzerland or a Member State or States of the European Union as of the date of signature of this Agreement, or nationals of one or more of these States, 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, or limit the operating authorizations or technical permissions of an airline where:

a. that airline is not an airline of the other Party under paragraph 4 of Article 1;

b. i. for an airline of the United States, substantial ownership and effective control of that airline are not vested in the United States, U.S. nationals, or

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both;

ii. for an airline of Switzerland, substantial ownership and effective control of that airline are not vested in Switzerland or a Member State or States of the European Union as of the date of signature of this Agreement, or nationals of one or more of these States, or both;

c. that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement; or

d. the other Party is not maintaining and administering the provisions as set forth in Article 6 (Safety).

2. Unless immediate action is essential to prevent further noncompliance with subparagraphs 1(c) or 1(d) 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, 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 7 (Aviation Security).

#### Article 5

##### Application of Laws

1. The laws and regulations 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 applied to the aircraft utilized by the airlines of the other Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first Party.

2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew, or cargo on aircraft (including regulations 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

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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 the airlines of the other Party. 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. Each Party reserves the right to withhold, revoke, or limit 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.

3. Any action by one Party to withhold, revoke, or limit the operating authorization or technical permission of an airline or airlines of the other Party in accordance with paragraph 2 above shall be discontinued once the basis for the taking of that action ceases to exist.

## Article 7

### Aviation Security

1. In accordance with their rights and obligations under international law, the Parties reaffirm 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 act in conformity with international agreements relating to the security of civil aviation to which they both are parties, including the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 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.

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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 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 all aviation security provisions 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 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.

4. Each Party shall ensure that effective measures are taken within its territory 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; and that those measures are adjusted to meet increased threats to the security of civil aviation. Each Party agrees that the security provisions required by the other Party for departure from and while within the territory of that other Party must be observed. Each Party shall give positive consideration to any request from the other Party for special security measures to meet a particular threat.

5. With full regard and mutual respect for each other's sovereignty, a Party may adopt security measures for entry into its territory. Where possible, that Party shall take into account the security measures already applied by the other Party and any views that the other Party may offer. Each Party recognizes, however, that nothing in this Article limits the ability of a Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.

6. 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.

7. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the competent authorities of that Party may request immediate consultations with the competent 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, limit, or impose conditions on the operating authorization

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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.

## 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.
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.
3. Each airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground 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. Any airline of each 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 or other intermediaries appointed by the airline. 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, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without 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.

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

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

provided that all airlines and surface transportation providers in such arrangements hold the appropriate authority and 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 transportation for cargo 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, and including, where applicable, the right to transport cargo in bond 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 imposed by the national authorities and not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

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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. ground equipment and 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 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.

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 competent 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.

5. A Party may request the assistance of the other Party, on behalf of its airlines, in securing an exemption from taxes, duties, charges, and fees imposed by state and local governments or authorities on the goods specified in paragraphs 1 and 2 of this Article, as well as from fuel through-put charges, in the circumstances described in this Article, except to the extent that the charges are based on the cost of providing the service. In response to such a

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request, the other Party shall bring the views of the requesting Party to the attention of the relevant governmental unit or authority and urge that those views be given appropriate consideration.

## Article 10

### User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.
2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities or bodies to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless:
  - i) it fails to undertake within a reasonable amount of time a review of the charge or practice that is the subject of complaint by the other Party; or
  - ii) 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.

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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 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. Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in this Agreement. If a Party requires filings for information purposes, 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. Prices for international air transportation between the territories of the Parties shall not be required to be filed. Notwithstanding the foregoing, the airlines of the Parties shall provide timely access to information on historical, existing, and proposed prices as requested by the aeronautical authorities of the Parties.

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Article 13

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.

Article 14

Settlement of Disputes

1. Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing), that is not resolved by a first round of formal consultations may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.

2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

a. Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. 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 agreed or as directed by the tribunal, the statement of claim shall be submitted within 45 days of the time the tribunal is fully constituted, and

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the statement of defense shall be submitted 60 days thereafter. Any reply to the statement of defense shall be submitted within 30 days of the submission of the statement of defense. Any response to this reply shall be submitted within 30 days thereafter. If either Party requests it or the tribunal deems it appropriate, the tribunal shall hold a hearing within 45 days after the last pleading is due.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date that the last pleading is submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 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 the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of subparagraph 2(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

## Article 15

### Amendments

1. This Agreement may be amended by written agreement of the Parties.

2. An amendment of the Agreement shall enter into force upon an exchange of diplomatic notes, following the completion of all constitutional procedures of the Parties. Such an amendment may be provisionally applied, upon agreement of the Parties.

3. If either Party considers it desirable to amend an Annex, it may request consultations between the competent authorities of the Parties. When these authorities agree on an amendment to an Annex, their recommendations on the matter will come into effect when they have been confirmed by an exchange of diplomatic notes.

## Article 16

### Multilateral Agreements

If, after entry into force of this Agreement, both Parties become party to a multilateral agreement that addresses

matters covered by this Agreement, they shall consult to determine whether this Agreement should be revised to take into account the multilateral agreement.

Article 17

Termination

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 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) immediately before the first anniversary of the date of receipt of the notice by the other Party, 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.

Article 19

Entry into Force

This Agreement shall be provisionally applied upon signature and shall enter into force upon an exchange of diplomatic notes, following the completion of all constitutional procedures of the Parties. Upon entry into force, it shall supersede the Air Transport Agreement between the Government of the United States of America and the Government of Switzerland, done at Washington, June 15, 1995.

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

DONE at ....., this ..... day of ..... in duplicate, in the English and German languages, each text being equally authentic.

FOR THE GOVERNMENT OF  
THE UNITED STATES OF  
AMERICA:

FOR THE GOVERNMENT OF  
SWITZERLAND:

ANNEX I

Scheduled and Charter Air Transportation

Section 1

Routes

Airlines of each Party authorized under this Agreement shall be entitled to perform international air transportation between points on the following routes:

A. Routes for the airline or airlines of the United States:

From points behind the United States via the United States and intermediate points to a point or points in Switzerland and beyond; and for all-cargo service, between Switzerland and any point or points.

B. Routes for the airline or airlines of Switzerland:

From points behind Switzerland via Switzerland and intermediate points to a point or points in the United States and beyond; and for all-cargo service, between the United States and any point or points.

Section 2

Operational Flexibility

Each airline of a 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 on the routes 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 on the routes;
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 all-cargo services, the service serves a point in the territory of the Party that issued the airline's Air Operator's Certificate (AOC).

### Section 3

#### Change of Gauge

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 that issued the airline's AOC and, in the inbound direction, the transportation to the territory of the Party that issued the airline's AOC is a continuation of the transportation from beyond such point.

### Section 4

#### Charter Consumer Protection

Nothing 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.

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ANNEX II

U.S. Government Procured Transportation

Effective October 1, 2008, airlines of Switzerland 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 Switzerland, 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 Annex shall not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department.

DR