

**AGREEMENT**  
**BETWEEN THE GOVERNMENT OF NEW ZEALAND**  
**AND THE GOVERNMENT OF THE COOK ISLANDS**

**CONCERNING AIR SERVICES**

The Government of New Zealand and the Government  
of the Cook Islands;

Being bound by the Convention on International Civil  
Aviation opened for signature at Chicago on 7 December,  
1944;

Desiring to conclude an Agreement, supplementary  
to the Agreement on Civil Aviation between the Government  
of New Zealand and the Government of the Cook Islands  
signed at Rarotonga on the sixth day of August 1985,  
for the purpose of establishing air services between  
their respective territories;

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement, unless the context otherwise requires:

- (a) the term "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944, and includes:
  - (i) any amendment thereto which has entered into force under Article 94(a) thereof and has been ratified by both Contracting Parties; and
  - (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or annex is at any given time effective for both Contracting Parties;
- (b) the term "aeronautical authorities" means in each case the Minister responsible for Civil Aviation or any person or body authorised to perform any functions at present exercisable by the abovementioned authorities;

- (c) the term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (d) the term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State;
- (e) (i) The term "air service" means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo;
- (ii) "international air service" means an air service which passes through the air space over the territory of more than one State;
- (iii) "airline" means any air transport enterprise offering or operating an international air service;
- (iv) "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, mail or cargo;
- (f) the term "tariff" means:
- (i) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;

- (ii) the freight rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
  - (iii) the conditions governing the availability or applicability of any such fare, freight rate or price, including any benefits attaching to it; and
  - (iv) the rate of remuneration paid by an airline to an intermediary in respect of tickets sold or air waybills completed by that intermediary for carriage on scheduled air services.
- (g) the term "this Agreement" includes the Annex hereto and any amendments to it or to the Agreement.

## Article 2

### Applicability of Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air services.

5

Article 3

Grant of Rights

- (1) Subject to the provisions of this Agreement, a designated airline of each Contracting Party shall enjoy the following rights:
- (a) the right to fly without landing across the territory of the other Contracting Party;
  - (b) the right to make stops in that territory for non-traffic purposes; and
  - (c) the right to make stops in that territory while operating an agreed service on a specified route at the points specified for that route in the Annex, for the purposes of putting down and taking on international traffic in passengers, mail and cargo.
- (2) Nothing in paragraph (1) of this Article shall be deemed to confer on a designated airline of one Contracting Party the right to take on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

- (3) If in the event of special and unusual circumstances, a designated airline of one Contracting Party is unable to operate a service on its normal routeing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of routes.

#### Article 4

##### Designation of and Authorisation of Airlines

- (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services.
- (2) On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to an airline designated the appropriate operating authorisation.
- (3) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by them, in conformity with the provisions of the Convention, to the operation of international air services.

(4) Each Contracting Party shall have the right to withhold the rights granted under Article 3, or to impose such conditions as it may deem necessary on the exercise by that airline of those rights in any case where:

(a) it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating that airline or in nationals of that country; or

(b) a designated airline fails to comply with the national laws and regulations referred to in paragraph (3) of this Article.

(5) At any time after the provisions of paragraph (1) and (2) of this Article have been complied with, an airline so designated and authorised may begin to operate the agreed services.

## Article 5

### Revocation or Suspension of Operating Authorisations

(1) Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3(1)(c) of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of such Contracting Party; or
  - (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
  - (c) if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
- (2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

## Article 6

### Charter or Lease

In operating any agreed service on any specified route the designated airline of each Contracting Party shall give the other Contracting Party 60 days notice in writing of any intention to lease, charter, hire or otherwise use or operate on a continuing basis any aircraft not owned by it or owned by the designated airlines of the Contracting Parties.



Article 7

## Applicability of Laws

- (1) The laws and regulations of one Contracting 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 of the airline or airlines designated by the other Contracting Party, and shall be complied with by such aircraft upon entrance into or departure from, and while within the territory of the first Contracting Party.
- (2) The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine, shall be complied with by or on behalf of such passengers, crew or cargo of the other Contracting Party upon entrance into or departure from, and while within the territory of the first Contracting Party.

Article 8

## Principles Governing Operation of Agreed Services

- (1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.
- (2) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.
- (3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision at a reasonable load factor of capacity adequate for the current and reasonably anticipated requirements of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;
  - (b) traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the area; and
  - (c) the requirements of through airline operation.
- (4) The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing paragraphs of this Article for the operation of the agreed services by the designated airlines.

## Article 9

### Tariffs

- (1) The tariffs for carriage on agreed services to and from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, the interests of users, reasonable profit, characteristics of service (such as standards of speed and accommodation) and, where it is deemed suitable, the tariffs of other airlines for any part of the specified route.

(2) The tariffs referred to in paragraph (1) of this Article shall be agreed upon, if possible, between the designated airlines of the Contracting Parties; such agreement shall be reached, whenever possible, through the international tariff coordination mechanism of the International Air Transport Association. However, a designated airline shall not be precluded from filing any proposed short term tariff unilaterally if circumstances so warrant. Unless otherwise determined in the application of paragraph(5) of this Article, or where a proposed tariff has been unilaterally filed, each designated airline shall be responsible only to its aeronautical authorities for the justification and reasonableness of the tariffs so proposed.

(3) Any tariffs for an agreed service shall be filed with the aeronautical authorities of both Contracting Parties at least 30 days prior to the proposed effective date unless the aeronautical authorities of both Contracting Parties permit the filing to be made on shorter notice. Any proposed tariff shall be filed by a designated airline with the aeronautical authorities of both Contracting Parties in such form as the aeronautical authorities of each Contracting Party may require.

- (4) If the aeronautical authorities of one Contracting Party, on receipt of any filing referred to in paragraph (3) of this Article, are dissatisfied with the tariff proposed, they shall so notify the aeronautical authorities of the other Contracting Party within 15 days from the date of receipt of such tariff, but in no event less than 15 days prior to the proposed effective date of such tariff. If notification of dissatisfaction is not given as provided in this paragraph, the tariff shall be deemed to be approved by the aeronautical authorities of the Contracting Party receiving the filing and shall become effective on the proposed date.
- (5) If a tariff cannot be established in accordance with the provisions of paragraph (2) of this Article or if during the period applicable in accordance with paragraph (4) of this Article a notice of dissatisfaction has been given, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariff by agreement between themselves. Consultations between the aeronautical authorities will be held in accordance with Article 16 of this Agreement.
- (6) If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph (3) of this Article or on the determination of any tariff under paragraph (5) of this Article the dispute shall be settled in accordance with the provisions of Article 17 of this Agreement.

- (7) (a) No tariff shall come into force if the aeronautical authorities of either Contracting Party are dissatisfied with it except under the provisions of paragraph (3) of Article 17 of this Agreement.
- (b) When tariffs have been established in accordance with the provisions of this Article, those tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article or Article 17 of this Agreement.
- (8) If the aeronautical authorities of one of the Contracting parties become dissatisfied with an established tariff, they shall so notify the aeronautical authorities of the other Contracting Party and the designated airlines shall attempt, where required, to reach an agreement. If within the period of ninety (90) days from the day of receipt of such notification, a new tariff cannot be established in accordance with the provisions of paragraphs (2) and (3) of this Article, the procedures as set out in paragraphs (5) and (6) of this Article shall apply. In no circumstances however, shall a Contracting Party require a different tariff from the tariff of its own designated airline for comparable services between the same points.

(9) The tariffs charged by the designated airline(s) of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a third State involving also points other than on agreed services shall be subject to the approval of the aeronautical authorities of the other Contracting Party and such third State; provided, however, that the aeronautical authorities of a Contracting Party shall not require a different tariff from the tariff of its own airlines for comparable service between the same points. The designated airlines of each Contracting Party shall file such tariffs with the aeronautical authorities of the other Contracting Party in accordance with their requirements. Approval of such tariffs may be withdrawn on not less than 15 days' notice.

#### Article 10

##### Customs Duties

- (1) Aircraft operated in international air services by the designated airlines of either Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco), which are on board such aircraft, shall be relieved on the basis of reciprocity from all customs duties, national excise taxes, and similar national fees and charges not based on the cost of services provided, on arriving in the territory of the other Contracting Party, provided such equipment and supplies remain on board the aircraft

(2) There shall also be relieved from the duties, taxes, 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 Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;
- (b) spare parts including engines introduced into the territory of a Contracting Party for the maintenance or repair of aircraft used in an international air service of a designated airline of the other Contracting Party; and
- (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in an international air service of a designated airline of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting 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 reliefs provided for by this Article shall also be available in situations where the designated airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs (1) and (2) of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

#### Article 11

#### Aviation Security

## Article 12

### Provision of Statistics

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by those airlines on the agreed services and the origins and destinations of such traffic.

## Article 13

### Transfer of Earnings

Subject only to any foreign currency regulations which may be imposed by either Contracting Party with general application to all other countries, each designated 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 effected at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance. The transfer of funds shall not be subject to any charges except those normally collected by banks for such operations.

Airline Representation

- (1) The designated airline or airlines of one Contracting Party shall be entitled, in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the territory of the other Contracting Party those of their own managerial, technical, operational and other specialist staff who are required for the provision of air services.
- (2) Each Contracting Party agrees to use its best efforts to ensure that the designated airlines of the other Contracting Party are offered the choice, subject to reasonable limitations which may be imposed by airport authorities, of providing their own services for ground handling operations; of having such operations performed entirely or in part by another airline, an organisation controlled by another airline, or a servicing agent, as authorised by the airport authority, or of having such operations performed by the airport authority.
- (3) Each Contracting Party grants to each designated airline of the other Contracting Party the right to engage in the sale of air transportation in its territory directly and, at the airline's discretion, through its agents. 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 of other countries.

Article 15

## User Charges

- (1) Neither Contracting Party shall impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own designated airlines operating similar international air services.
- (2) Each Contracting Party shall use its best efforts to ensure that user charges imposed or permitted to be imposed by its competent charging authorities on the designated airlines of the other Contracting Party are just and reasonable.
- (3) Each Contracting Party shall encourage consultation between its competent charging authorities and airlines using the services and facilities, where practicable through the airlines' representative organisations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made. Each Contracting Party shall further encourage the competent charging authorities and the airlines to exchange appropriate information concerning user charges.

Article 16

## Consultation

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of sixty (60) days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

Article 17

## Settlement of Disputes

- (1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by negotiation.

- (2) If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other of a note through the diplomatic channel requesting arbitration of the dispute and the third arbitrator shall be appointed within a period of sixty days from the appointment of the arbitrator last appointed. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.
- (3) The Contracting Parties undertake to comply with any decision of the tribunal given under paragraph (2) of this Article.

Article 18

## Amendment

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an Exchange of Notes.

Article 19

## Termination

Either Contracting Party may at any time give to the other notice of its intention to terminate this Agreement. Such notice shall be given in writing through the diplomatic channel and a copy of the notice shall be sent simultaneously to the International Civil Aviation Organisation by the Contracting Party giving notice. This Agreement shall terminate one year after the date of receipt by the other Contracting Party of the said notice unless by agreement between the Contracting Parties the notice is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt of the notice, the notice shall be deemed to have been received fourteen days after the International Civil Aviation Organisation has received its copy.

Article 20

Registration with ICAO

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

Article 21

Entry into Force

This Agreement shall enter into force on the date of signature.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done, in duplicate at *Auckland* this *21<sup>st</sup>* day of June 1986

For the Government of  
New Zealand

For the Government of  
the Cook Islands

*R. V. Bell*

*Thomas Davis*



## ANNEX

### ROUTE SCHEDULE

#### Section I

##### New Zealand Routes

The designated airline of New Zealand shall have the right to operate services:

- (a) between points in New Zealand and Rarotonga, optionally via intermediate points in the Island States of the South Pacific; and
- (b) between points in New Zealand and Rarotonga optionally via intermediate points in the Island States of the South Pacific, optionally beyond to French Polynesia, the United States and Canada.

#### Section II

##### Cook Islands Routes

The designated airline of the Cook Islands shall have the right to operate services between points in the Cook Islands and Auckland, optionally via intermediate points in Island States of the South Pacific.