

AGREEMENT

BETWEEN

THE GOVERNMENT OF NEW ZEALAND

AND

THE GOVERNMENT OF THE REPUBLIC OF INDIA

RELATING TO

AIR SERVICES

THE GOVERNMENT OF NEW ZEALAND

AND

THE GOVERNMENT OF THE REPUBLIC OF INDIA

Hereinafter referred to as "the Contracting Parties";

Being PARTIES to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944;

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories;

Have agreed as follows:

ARTICLE 1

Definitions

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

(a) the term "aeronautical authorities" means, in the case of New Zealand, the Minister responsible for Civil Aviation and, in the case of India, the Director General of Civil Aviation or, in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;

(b) the term "agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the public transport of passengers, cargo and mail, separately or in combination;

(c) the term "Agreement" means this Agreement, its Annex, and any amendments thereto;

(d) the term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have become effective for both Contracting Parties;

(e) the term "designated airline" means an airline or airlines designated and authorised in accordance with Article 3 of this Agreement;

(f) the term "tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration and conditions for the carriage of mail;

(g) the terms "air services", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention; and

(h) the term "territory" has the meaning assigned to it in Article 2 of the Convention, provided that, in the case of New Zealand, the term "territory" shall exclude the Cook Islands, Niue and Tokelau.

ARTICLE 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of the scheduled international air services operated by its airline:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in the Agreement for the purpose of establishing and operating the agreed services by the airlines designated by the other Contracting Party. While operating the agreed services, the designated airline of each Contracting Party shall enjoy, in addition to the rights specified in paragraph (1) of this Article, the right to make stops in the territory of the other Contracting Party at the points specified in the Annex to this Agreement for the purpose of taking up and discharging international traffic in passengers, cargo and mail, separately or in combination including to and from other points specified in the Annex.

3. Nothing in paragraph (2) of this Article shall be deemed to confer on a designated airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail destined for another point in the territory of that other Contracting Party.

ARTICLE 3

Designation and Operating Authorisation

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party up to two airlines to operate the agreed services and to withdraw or alter such designations.

2. On receipt of such designation and subject to the provisions of paragraphs (3) and (4) of this Article, the aeronautical authorities of the other Contracting Party shall grant without delay to an airline so designated the appropriate operating authorisations for the agreed services for which that airline has been designated.

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, rules and regulations normally applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 2, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals. For the

purpose of this paragraph, the expression “substantial ownership and effective control” means that in any case where the designated airline operates its services under this Agreement by entering into any agreement with the airline of any other country, or the Government or nationals of any other country, the Contracting Party designating the airline or its nationals may be deemed not to have substantial ownership and effective control of the designated airline, unless the Contracting Party or its nationals, in addition to the ownership of the major part of the assets of the designated airline, have also:

- (a) effective control in the management of the designated airline; and
- (b) ownership and effective control of the major part of the fleet of aircraft and equipment used in the operation of the services.

5. Upon receipt of such authorisations the airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of this Agreement.

ARTICLE 4

Revocation and Suspension of the Operating Authorisation

1. The aeronautical authorities of each Contracting Party shall have the right to revoke or suspend the operating authorisation granted under Article 3 of this Agreement to an airline designated by the other Contracting Party, or attach conditions, temporarily or permanently, to such authorisations in the event that:

- (a) such airline ceases to qualify before the aeronautical authorities of that Contracting Party under the laws, rules and regulations normally and reasonably applied by these authorities in conformity with the Convention;
- (b) such airline fails to comply with the laws, rules and regulations of that Contracting Party;
- (c) ~~they are not satisfied that substantial ownership and effective~~ control of the airline are vested in the Contracting Party designating the airline or in its nationals; and
- (d) the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further infringement of the laws, rules and regulations referred to above, the rights

enumerated in paragraph (1) of this Article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article 15 of this Agreement.

ARTICLE 5

Applicability of Laws, Rules and Regulations

1. The laws, rules and regulations of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by a designated airline of the other Contracting Party.

2. The laws, rules and regulations of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall, as applicable, be complied with by a designated airline of the other Contracting Party and by its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.

3. Neither of the Contracting Parties shall give preference to its own ~~airline or to an airline of any other country over a designated airline of the other~~ Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.

4. Passengers, baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances. Baggage and

cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 6

Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting 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 Contracting Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

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

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who

have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

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

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

6. Each Contracting Party shall take such measures as it may find practicable to ensure that an aircraft of the other Contracting Party, subjected to an act of unlawful seizure or other acts of unlawful interference, which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

7. Should one Contracting Party encounter difficulties with regard to the application of the aviation security provisions of this Article, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

8. Any departure from the provisions of this Article may constitute grounds for the application of Article 4 of this Agreement.

ARTICLE 7

Customs Duties and Other Charges

1. Aircraft operated on international services by the designated airline of either Contracting Party, as well as its regular equipment, supplies of fuels and lubricants and aircraft stores already on board, introduced into or taken on board such aircraft and intended solely for use by or in such aircraft shall, with respect to all customs duties, inspection fees and other duties or taxes, be accorded in the territory of the other Contracting Party, treatment not less favourable than that granted by the other Contracting Party to its own airline operating scheduled international air services or to the airlines of the most favoured nation.

2. The same treatment shall be accorded to spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airline of the other Contracting Party.

~~3. Neither Contracting Party shall be obliged to grant to the designated airline of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges if the other Contracting Party does not grant exemption or remission of such charges to the designated airline of the first Contracting Party.~~

4. The regular airborne equipment as well as the materials and supplies retained on board the aircraft of either Contracting Party may be

unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory.

5. Materials referred to in paragraphs (1), (2) and (4) of this Article may be required to be kept under customs supervision and control.

ARTICLE 8

User Charges

1. Each Contracting Party shall encourage consultations on user charges between its competent authorities and the designated airlines using the services and facilities provided by those charging authorities, where practicable, through the airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning user charges.

2. Neither Contracting Party shall give preference to its own or any other airline over an airline of the other Contracting Party, engaged in similar international air services, in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways, air traffic services and associated facilities under its control.

ARTICLE 9

Principles Governing the 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.
 2. In operating the agreed services, the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the same route.
 3. The capacity to be provided on the agreed services by the designated airlines shall bear a close relationship to the estimated air transport requirements of the travelling public between the territories of the Contracting Parties.
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4. Based upon the principles enshrined in the preceding paragraphs, the capacity to be provided and the frequency of services to be operated by the designated airline of each Contracting Party shall be agreed between the aeronautical authorities of the two Contracting Parties.
 5. Any increase in the capacity to be provided and/or frequency of services to be operated by the designated airline of either Contracting Party shall be based primarily

on the increased requirements of traffic between the territories of the Contracting Parties and shall be subject to agreement between the two aeronautical authorities. Pending such agreement or settlement, the capacity and frequency entitlements already in force shall prevail.

ARTICLE 10

Tariffs

1. The tariffs applicable between the territories of the two Contracting Parties shall be established at reasonable levels, due regard being paid to all relevant factors including the cost of operation, the interests of users, reasonable profit, class of service and, when it is deemed suitable, the tariffs of other airlines operating over whole or part of the routes specified in the Annex.

2. Such tariffs may be agreed by the designated airlines of both Contracting Parties seeking approval of the tariffs. However, a designated airline will not be precluded from proposing a tariff unilaterally, nor the aeronautical authorities from approving such a tariff.

3. The aeronautical authorities of either Contracting Party may require tariffs for an agreed service to be filed for approval (in such form as they may separately require), in which case such filing shall be submitted at least sixty (60) days before the proposed effective date, unless those aeronautical authorities permit the filing to be made on a shorter notice.

4. Where any tariffs are required to be filed, they shall become effective only after their approval by the aeronautical authorities of both Contracting Parties. If the aeronautical authorities of neither Contracting Party have expressed disapproval within thirty (30) days from the date of submission, those tariffs shall be deemed approved. In the event of the period for submission being reduced, as provided for in paragraph (3) above, the aeronautical authorities

of the two Contracting Parties may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

5. If the aeronautical authorities do not agree on any tariff submitted to them under the provisions of this Article, the dispute may be settled in accordance with the provisions of Article 16 of this Agreement.

6. The tariffs charged by a designated airline of one Contracting Party for carriage between the territory of the other Contracting Party and the territory of a State which is not a Contracting Party shall be subject to the approval of the aeronautical authorities of the other Contracting Party and of such non-Contracting State respectively, provided, however, that the aeronautical authorities of a Contracting Party shall not require a different tariff from the tariff of their own airlines for services between the same points. A designated airline of either 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 no less than fifteen (15) days' notice provided, however, that a Contracting Party shall permit the designated airline concerned to apply the same tariffs as its own airlines for services between the same points.

7. ~~Except for tariffs with a specific period of validity, a tariff~~
established in accordance with the provisions of this Article shall remain in force until a new tariff has been established.

ARTICLE 11

Airline Representation

1. A designated airline of one Contracting Party shall be allowed, on the basis of reciprocity and subject to paragraph (3) of this Article, to bring into and to maintain in the territory of the other Contracting Party its representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.

2. These staff requirements may, at the option of the designated airline, be satisfied by its own personnel or by using the services of any other organisation, company or airline operating in the territory of the other Contracting Party and authorised to perform such services in the territory of that Contracting Party.

3. The representatives and staff referred to in paragraph (1) of this Article shall be subject to the laws and regulations of the other Contracting Party and, consistent with such laws and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorisations, visitor visas or other similar documents to the said representatives and staff.

ARTICLE 12

Commercial Opportunities and Transfer of Funds

1. The designated airline of each Contracting Party shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Such designated airline shall have the right to sell transportation in the currency of that territory or, to the extent permitted by national law, in freely convertible currencies of other countries, and to the same extent any person shall be free to purchase such transportation in currencies accepted for sale by that airline.

2. Each Contracting Party grants to the designated airline of the other Contracting Party the right to remit to its head office the excess of receipts over expenditure earned in the territory of the first Contracting Party. Such remittances, however, shall be made in any convertible currency, and subject to, and in accordance with the foreign exchange regulations of the Contracting Party in the territory in which the revenue accrued.

3. Such transfers shall be effected on the basis of the official exchange rate for currency payment, or where there are no official exchange rates, at the prevailing foreign exchange market rates for currency payment.

4. If special arrangements ruling the settlement of payments are in force between the two Contracting Parties, the provisions of such arrangements shall be applied to the transfer of funds under paragraph (2) of this Article.

ARTICLE 13

Provision of Operating Information

1. The aeronautical authorities of each Contracting Party may require the designated airline of the other Contracting Party to file for their consideration and approval, at least sixty (60) days prior to the inauguration of the agreed services, information relating to the type of service and its frequency, the type of aircraft to be used and the flight schedules. Similar information may also be required to be filed at least thirty (30) days in advance as and when any changes are to be introduced regarding operation of the agreed services.

2. The designated airline shall also furnish any other information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of the Agreement are being duly observed.

ARTICLE 14

Provision of Statistics

The aeronautical authorities of either Contracting Party may require the designated airline of the other Contracting Party to furnish statistics relating to the traffic carried during each month on the agreed services to and from the territory of that other Contracting Party, showing the points of embarkation and disembarkation of such traffic. Such statistics shall be furnished as soon as possible after the end of each month.

ARTICLE 15

Consultation

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement, and shall also consult when necessary to provide for amendment thereof.

2. Either Contracting Party may request consultation, which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of receipt of a written request, unless both Contracting Parties agree to an extension of this period.

ARTICLE 16

Settlement of Disputes

If any dispute arises relating to the interpretation or application of this Agreement, the aeronautical authorities of the Contracting Parties shall endeavour to settle it by negotiations between themselves, failing which the dispute shall be referred to the Contracting Parties for settlement.

ARTICLE 17

Amendment

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of receipt of a written request unless both Contracting Parties agree to an extension of this period. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

ARTICLE 18

Applicability of Multilateral Air Conventions

1. To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention shall remain in force in their present form between the Contracting Parties for the duration of the Agreement, as if they were an integral part of the Agreement, unless both Contracting Parties ratify any amendment to the Convention, which shall have duly come into force, in which case the Convention as amended shall remain in force for the duration of this Agreement.

2. This Agreement shall be amended so as to conform with any other multilateral conventions concerning air transport which may become binding on both Contracting Parties.

ARTICLE 19

Termination

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgment of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 20

Entry into Force

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

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

DONE at *Wellington* on this *26th* day of *August* 1997 in two originals each in the Hindi and the English languages, both texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT
OF NEW ZEALAND

FOR THE GOVERNMENT
OF THE REPUBLIC OF INDIA



ANNEX

Route Schedule

I. Routes to be operated in both directions by airlines designated by New Zealand:

Points of Departure	Intermediate Points	Points of Destination	Points Beyond
Points in New Zealand	To be agreed	One point to be agreed	To be agreed

II. Routes to be operated in both directions by airlines designated by India:

Points of Departure	Intermediate Points	Points of Destination	Points Beyond
Points in India	To be agreed	One point to be agreed	To be agreed

Notes:

1. The designated airlines of either Contracting Party may on any or all flights omit calling at any of the intermediate points or beyond points provided that each service on these routes begins and/or terminates at a point in the territory of the Contracting Party designating the airline.

2. Intermediate and/or beyond points not specified may be served without exercising fifth freedom traffic rights.

3. The designated airlines shall be permitted to exercise traffic rights between the points in column 3 and the points in columns 2 and 4.