

**AIR SERVICES AGREEMENT BETWEEN
THE GOVERNMENT OF NEW ZEALAND AND
THE GOVERNMENT OF THE KINGDOM OF TONGA**

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

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

Desiring to facilitate the expansion of international air transport opportunities;

Recognising that efficient and competitive international air services enhance trade, the
welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a
variety of adequate service options at reasonable prices, 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
jeopardise the safety of persons or property, adversely affect the operation of air transport, 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:

- (a) "aeronautical authorities" means, in each case the Minister responsible for Civil Aviation, and any person or agency authorised to perform the functions exercised by the said Minister;
- (b) "Agreement" means this Agreement, its Annexes, and any amendments thereto;
- (c) "air transport" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
- (d) "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention;
- (e) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944, and includes:
 - (i) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, and
 - (ii) 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;
- (f) "designated airline" means an airline designated and authorised in accordance with Article 3 of this Agreement;



- (g) "international air transport" means air transport that passes through the airspace over the territory of more than one State;
- (h) "price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transport charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- (i) "scheduled" means a series of flights performed by aircraft for the transport of passengers, cargo and mail between two or more points, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public; and
- (j) "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 Tokelau.



Article 2

Grant of Rights

(1) Each Party grants to the other Party the following rights for the conduct of international air transport by the airlines of the other Party:

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

Designation and Authorisation

(1) Each Party shall have the right to designate as many airlines as it wishes to conduct international air transport in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorised to conduct the type of international air transport specified in Annex I or in Annex II or in both.

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

- (a) the airline is incorporated and has its principal place of business in the territory of the Party designating the airline;
- (b) effective control of that airline is vested in the Party designating the airline, nationals of that Party, or both;
- (c) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally applied to the operation of international air transport by the Party considering the application or applications; and
- (d) the Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security).



Article 4

Revocation of Authorisation

(1) Either Party may revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Party where:

- (a) that airline is not incorporated and does not have its principal place of business in the territory of the Party designating the airline;
- (b) effective control of that airline is not vested in the Party designating the airline, or that Party's nationals, or both;
- (c) that airline has failed to comply with the laws, regulations and rules referred to in Article 5 (Application of Laws, Regulations and Rules) of this Agreement; or
- (d) the other Party is not maintaining and administering the standards set forth in Article 6 (Safety).

(2) Unless immediate action is essential to prevent further non-compliance 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 authorisation 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, Regulations and Rules

(1) While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

(2) While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo of the other Party's airlines.

(3) Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transport in the application of its customs, immigration, quarantine and similar regulations.

(4) Passengers, baggage and cargo in direct transit through the territory of either Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.



Article 6

Safety

(1) Each Party shall recognise as valid, for the purpose of operating the international air transport provided for in this Agreement, certificates of airworthiness, certificates of competency, and licences issued or validated by the other Party and still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognise as valid for the purpose of flight above its own territory, certificates of competency and licences 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 designated airlines. 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 authorisation or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

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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 in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971, and any other multilateral agreement governing civil aviation security binding upon the Parties.

(2) The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, 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 the 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 agrees that such operators of aircraft may be required to observe the security provisions required by the other Party for entry into, for departure from, and while within the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each Party shall also



give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

(5) Each Party shall also give sympathetic consideration to a request from the other Party to enter into reciprocal administrative arrangements whereby the aeronautical authorities of one Party could make in the territory of the other Party their own assessment of the security measures being carried out by aircraft operators in respect of flights destined for the territory of the Party making such a request.

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

(7) Each Party shall take such measures as it may find practicable to ensure that an aircraft of the other Party which is subjected to an act of unlawful seizure or other acts of unlawful interference and which lands 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.

(8) When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement on the issues involved within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorisation and technical permissions of an airline or airlines of that Party. When required to do so 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 transport.

(2) The designated 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 transport.

(3) Each designated 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. Each designated airline shall also have the right, in the territory of the other Party, to offer its services as a ground-handling agent in whole or in part, to any other airline. 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 which would be available if self-handling were possible.

(4) Any airline of either Party may engage in the sale of air transport in the territory of the other Party directly and, at the airline's discretion, through its agents. Each airline shall have the right to sell such transport and any person shall be free to purchase such transport, 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.

(7) In operating or holding out international air transport pursuant to this Agreement, any designated airline may enter into cooperative arrangements, including but not limited to code-sharing or leasing arrangements, with any other airline including airlines of third countries which have the appropriate operating authorisations for the cooperative arrangement in question.

(8) Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transport of the Parties shall be permitted, without restriction, to employ in connection with international air transport any surface transport 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. Access to airport customs processing and facilities shall be provided for such cargo, whether moving by surface or by air. Airlines may elect to perform their own surface transport or to provide it through arrangements with other surface carriers, including surface transport operated by other airlines and indirect providers of cargo air transport. Such intermodal cargo services may be offered at a single, through price for the air and surface transport combined, provided that shippers are not misled as to the facts concerning such transport.



Article 9

Customs Duties and Charges

(1) On arriving in the territory of one Party, aircraft operated in international air transport by the designated 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 transport 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 (1) imposed by the national authorities, and (2) not based on the cost of the services provided, provided that such equipment and supplies remain on board the aircraft.

(2) The following 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 transport, 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 transport;



- (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 transport, 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 transport, 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 appropriate authorities.

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



Article 10

Fair Competition

(1) Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in providing the international air transport governed by this Agreement.

(2) Each Party shall allow each designated airline to determine the frequency and capacity of the international air transport 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 designated 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 designated 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, programmes for non-scheduled 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 authorised in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimise the administrative burdens on air transport intermediaries and on designated airlines of the other Party of filing requirements and procedures.



Article 11

Pricing

(1) Prices for international air transport operated pursuant to this Agreement may be required to be filed with the aeronautical authorities of either Party for notification purposes.

(2) Intervention by the aeronautical authorities shall be limited especially to:

- (i) preventing unreasonable discriminatory tariffs or practices;
- (ii) protecting consumers from tariffs that are unreasonably high or unreasonably restrictive due either to their abuse of a dominant position or to concerted practices among air carriers; and
- (iii) protecting airlines from tariffs that are artificially low because of direct or indirect government subsidy or support.



Article 12

Consultations

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

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Article 13

Settlement of Disputes

(1) Any dispute arising under this Agreement that is not resolved by a first round of formal consultations may be referred by agreement of the Parties to some person or body for decision. 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, each Party shall submit a memorandum within 45 days after the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or on its own initiative within 15 days after replies are 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 both replies are 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 paragraph 2(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

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Article 14

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 such notice by the other Party, unless the notice is withdrawn before then by agreement of the Parties.



Article 15

Registration with ICAO

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

(2) In the event of the conclusion of any general multilateral convention or agreement concerning air transport by which both Parties become bound, the present Agreement shall be amended so as to conform with the provisions of such convention or agreement.

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Article 16

Entry into Force

This Agreement and its Annexes shall enter into force on the date of signature. Upon entry into force, this Agreement shall supersede the *Agreement between New Zealand and the Kingdom of Tonga Concerning Air Services*, signed at Wellington, on 26 November 1980, as amended.

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

DONE at Nuku'alofa, this 12th day of February, 2002, in duplicate in the English language.

For the Government of
New Zealand

For the Government of
the Kingdom of Tonga


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ANNEX I

Scheduled Air Transport

Section 1

Routes

Airlines of each Party designated pursuant to this Agreement to operate under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transport, as follows:

- A. Routes for the airlines or airlines designated by the Government of New Zealand
1. From points behind New Zealand via New Zealand and intermediate points to a point or points in Tonga and beyond.
 2. Between Tonga and any point or points.
- B. Routes for the airline or airlines designated by the Government of Tonga
1. From points behind Tonga via Tonga and intermediate points to a point or points in New Zealand and beyond.
 2. Between New Zealand and any point or points.



Section 2

Operational Flexibility

The designated airlines of each Party may, on any or all flights and at the option of each airline:

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, including points within the territory of the Party designating the airline;
5. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
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;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

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Section 3

Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air transport without any limitation as to change in type or number of aircraft operated, at any point on the route.

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ANNEX II

Non-Scheduled International Air Transport

Airlines of each Party designated pursuant to this Agreement to operate under this Annex shall have the right to operate non-scheduled international air transport over the routes specified and in accordance with the rights granted for scheduled services in this Agreement.

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

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