



# MULTILATERAL AIR SERVICES AGREEMENT

# MULTILATERAL AIR SERVICES AGREEMENT AMONG THE MEMBER STATES OF THE CARIBBEAN COMMUNITY

## PREAMBLE

### **The Member States,**

**Recalling** the goal of the Community Transport Policy set out in Chapter Six of the Revised Treaty of Chaguaramas (the Revised Treaty) to provide adequate, safe and internationally competitive transport services for the development and consolidation of the CSME;

**Recalling also** the undertaking of Member States of the Community set out in Articles 33 and 37 of the Revised Treaty to remove restrictions on the right of establishment of Community nationals and the right of Community nationals to provide services within the Community on a non-discriminatory basis;

**Noting** the Multilateral Agreement concerning the operation of Air Services within the Caribbean Community concluded among Member States of the Community on 17 November 1998 prior to the entry into force of the Revised Treaty and which requires revision in order to implement the liberalized air transport services regime envisaged by the Revised Treaty;

**Committed** to the establishment of a single market for air transport services consistent with their obligations under the Revised Treaty, which requires the establishment of a framework within the Community for the liberal exchange of route, traffic and other air transport rights in the context of traffic requirements, the promotion of healthy competition and growth in the air transport sector and improved efficiency and quality of air transport services for consumers;

**Committed also** to the establishment of an air transport regime within the Community that conforms to the highest international standards of safety and security;

**Recognising** the fundamental importance of the concept of the Community of Interest shared amongst Member States and the embodiment of the principle in ICAO Resolution A38-14 as a valid basis for the designation of an air carrier of a state belonging to such an economic grouping to exercise route rights and other air transport rights of another state belonging to the same grouping and the need to achieve and maintain economic viability of CARICOM air carriers;

**Recognising also** the obligation of Member States under the Convention on International Civil Aviation which was opened for signature at Chicago on 7<sup>th</sup> December 1944;

**Cognizant** of the strategic role of air transportation in promoting the sustainable development of the economies and protection of the environment within the Community;

Have agreed as follows:

## Article 1 Definitions

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

**"aeronautical authority"** used in relation to a Member State means the Minister, Civil Aviation Authority, or other person or agency responsible for the regulation of civil aviation in that Member State;

**"agreed services"** means air transport services pursuant to a right granted under Article 5;

**"Agreement"** means this Agreement and any amendment thereto;

**"air carrier"** means a person, organization or enterprise that engages in domestic or international commercial air transport operations or both;

**"air transportation"** means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

**"anti-competitive business conduct"** means conduct by an air carrier which prejudices trade and prevents, restricts or distorts competition within the territory of a requesting state within the meaning of Article 175 of the Revised Treaty;

**"cabotage"** means taking up and discharging passengers, cargo and mail, separately or in combination, between two points in the same Member State;

**"capacity"** means the volume of air services provided under this Agreement which is normally measured in terms of the number or frequency of flights, or the number of seats, or tons offered for cargo in a market or on a route for a specific period such as daily, weekly, monthly, annually or seasonally;

**"CARICOM air carrier"** means an air carrier which is a Community national;

**"Chicago Convention"** means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:

- (a) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by Member States; 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 Member States and is relevant to the issue in question;

**"Community"** means the Caribbean Community established by Article 2 of the Revised Treaty;

**"Community national"** means:

- (a) a person who is a citizen of a Member State;
- (b) a person who has a connection with a Member State of a kind which entitles that person to be regarded as belonging to it, or if it be so expressed as being a native or resident of that Member State for the purposes of the laws thereof relating to immigration; or
- (c) a company or other legal entity constituted in a Member State in conformity with the laws of that Member State and which that

Member State regards as belonging to it, provided that such company or such legal entity -

- (i) has been formed for gainful purposes;
- (ii) has its registered office and central administration in a Member State;
- (iii) carries on substantial activities within the Community; and
- (iv) is substantially owned and effectively controlled by persons mentioned in sub-paragraph (a) and (b) of this paragraph.

**"COTED"** means the Council for Trade and Economic Development referred to in Article 15 of the Revised Treaty;

**"designated air carrier"** means an air carrier which has been designated in accordance with Article 6;

**"domestic air transportation"** means air transportation in which passengers, baggage, cargo and mail taken on board at one point in the territory of a state are destined for another point in the territory of the same state;

**"fair competitive environment"** means the set of social, market and cultural behaviours, laws and regulations of a country or society which allow state-owned and privately owned air carriers, the opportunity to compete freely and openly, impartially and equitably and which encourages innovation, choice and freedom to supply services and which allows business entities to take full advantage of innovations, explore new and innovative options and enter and exit the air transport sector in a transparent manner with minimum required costs and effort;

**"Former Agreement"** means the Multilateral Agreement concerning the operation of Air Services within the Caribbean Community concluded among Member States of the Community on 17 November 1998;

**"ICAO"** means the International Civil Aviation Organization established by the Chicago Convention;

**"international air transportation"** means air transportation in which the passengers, baggage, cargo or mail which are taken on board in the territory of one state are destined to the territory of another state;

**"licence"** includes operating licence;

**"Member State"** means a party to this Agreement;

**"operating licence"** means a licence issued by a Member State to a CARICOM air carrier in accordance with its laws to operate as a CARICOM air carrier in the territory of that Member State;

**"point"** means in relation to international air services, a designated port of entry and in relation to domestic air services, designated ports within a Member State;

**"price"** means:

- (a) air fares to be paid to air carriers or their agents or other ticket sellers for the carriage of passengers and baggage on air services and any conditions under which those prices apply, including

remuneration and conditions offered to agency and other auxiliary services; and

- (b) air rates to be paid for the carriage of cargo and conditions under which those rates apply including remuneration and conditions offered to agency and other auxiliary services;

**"principal place of business"** in relation to an air carrier, means the head office or registered office within which the principal financial functions and operational control, including continued airworthiness management, of the air carrier are exercised;

**"Revised Treaty"** means the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy signed in Nassau, The Bahamas, on July 5, 2001;

**"Secretary-General"** means the Secretary-General of the Community;

**"Seventh Freedom Rights"** means the right or privilege granted by a Member State (the Granting State) to another Member State (the Recipient State) to provide international air transport services between the territory of the Granting State and another Member State without requiring that such services originate or terminate in the territory of the Recipient State, i.e. the service need not connect to or be an extension of any service to or from the Recipient State;

**"third state"** means a state which is not a Party to this Agreement; and

**"user charges"** means a charge imposed on air carriers for the provision of airport, environmental, air navigation or aviation security facilities or services including related facilities and services.

2. For the purposes of this Agreement the territory of a state shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State, which shall include:

- (a) in the case of an archipelagic state, its archipelagic waters; and
- (b) the airspace above the territory of such state.

3. References in this agreement to **"air service"**, **"international air service"**, **"airline"**, and **"stop for non-traffic purposes"** shall be construed in accordance with the meanings assigned to them in Article 96 of the Chicago Convention.

4. For the purpose of determining the eligibility of an air carrier as a CARICOM air carrier, a company or other legal entity is:

- (a) **substantially owned** if more than fifty percent of the equity interest therein is beneficially owned by persons, companies or other entities as the case may be, mentioned in paragraph (a), (b) or (c) of the definition of Community national; and
- (b) **effectively controlled** if persons, companies or other entities mentioned in sub paragraph (a) have the power to name a majority of its directors or otherwise legally to direct its actions.

5. For the purpose of determining whether an air carrier is **substantially owned** or **effectively controlled** under paragraph 4, any equity interest

beneficially owned by one or more Member States shall be deemed to be held by Community nationals.

6. An air carrier which has its principal place of business in a Member State within the meaning of this Agreement shall be deemed to have its central administration in a Member State within the meaning of paragraph (c) (ii) of the definition of Community national.

7. Unless the context otherwise requires, references in this Agreement to actions to be taken or not taken by a Member State in relation to a designated air carrier shall be construed as references to an air carrier designated by another Member State.

## **Article 2** **Objective of Agreement**

1. This Agreement seeks, within the framework of the Revised Treaty, to:
  - (a) establish a single market for air transport services within the Community in furtherance of the undertaking of Member States under paragraph 1 of Article 33 and paragraph 1 of Article 37 of the Revised Treaty to remove barriers to the right of establishment of Community nationals and the right of Community nationals to provide services within the Community; and
  - (b) establish measures to:
    - (i) promote the adoption of uniform standards and recommended practices for the provision of air transport services within the Community;
    - (ii) ensure uniformity in licensing and certification of aviation personnel within the Community; and
    - (iii) ensure that the provision of international air transport services in the Community is undertaken by financially viable and technically qualified air carriers.
2. This Agreement confers rights and obligations on Member States in furtherance of the objectives set out in paragraph 1.

## **Article 3** **Licensing Requirements**

1. A Member State shall not permit a CARICOM air carrier to operate within its territory unless it has been issued with an operating licence and an air operator's certificate by a Member State in accordance with the laws of that Member State.
2. Member States shall require an applicant for an operating licence to satisfy the following requirements:
  - (a) proof of registration of the air carrier in a Member State;
  - (b) possession of an air operator's certificate or other document evidencing a similar certification issued by the competent

aeronautical authority of the Member State in which the CARICOM air carrier is registered;

- (c) proof of eligibility as a CARICOM air carrier; and
- (d) evidence including a business plan which demonstrates the air carrier's financial fitness and ability to meet actual and potential obligations for a period of thirty-six months from commencement of the proposed operations.

3. Subject to this Agreement, a CARICOM air carrier satisfying the requirements of paragraph 2 shall be entitled to receive an operating licence but such a licence does not in itself confer any rights of access to specific routes or markets within the Community.

#### **Article 4** **Insurance and Reporting Requirements**

1. A Member State shall require holders of operating licences issued by that state to provide annually audited accounts and other relevant information as may be specified, disclosing any significant changes in operations or ownership.

2. A Member State shall not permit a CARICOM air carrier registered in its territory to operate air services unless it is insured to cover liability in case of accidents, in particular, in respect of passengers, baggage, cargo, mail and third party liabilities.

3. A Member State may require a CARICOM air carrier which operates air services within its territory to demonstrate that it satisfies the requirements of this Article.

#### **Article 5** **Grant of Rights**

1. Each Member State grants to the other Member States, for the benefit of air carriers designated by those Member States under Article 6 -

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes;
- (c) Seventh Freedom Rights;
- (d) rights of cabotage; and
- (e) the rights otherwise specified in this Agreement.

2. Member States shall, within the scope of the rights granted under paragraph 1, permit each designated carrier to, at the designated carrier's option:

- (a) provide, within the terms of their designations, scheduled, non-scheduled, charter and other services in either or both directions;
- (b) combine different flight numbers within one aircraft operation;

- (c) serve behind, intermediate and beyond points and points in the territories of the Member States on the routes in any combination and in any order;
- (d) omit stops at any point or points;
- (e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;
- (f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
- (g) make stopovers at any points whether within or outside the territory of any Member State;
- (h) carry transit traffic through the territory of any other Member State; and
- (i) combine traffic on the same aircraft regardless of where such traffic originates,

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

3. On any sector or segments of the agreed routes, a designated air carrier may provide air transportation services without any limitation at any point on the route with respect to the type or number of aircraft operated.

4. A Member State shall, in respect of the rights and benefits conferred under this Article:

- (a) accord to designated air carriers of another Member State treatment no less favourable than that accorded to air carriers of a third state; and
- (b) not discriminate between the designated air carriers of a Member State and air carriers designated by itself or otherwise registered in its territory, or bearing its nationality.

#### **Article 6** **Designation of Air Carriers**

1. A Member State may designate as many air carriers as it wishes to operate air transport services under this Agreement and may withdraw or alter such designations.

2. The designation of an air carrier by a Member State shall be transmitted in writing by the designating Member State to the Secretary-General for transmission to the other Member States.

#### **Article 7** **Grant of Operating Authorisations and Permissions to Air Carriers**

On receipt by a Member State of an application from a designated air carrier for the grant of operating authorisations or technical permissions with respect to or in connection with the provision of air transport services, the



Member State shall, subject to Article 8, grant the operating authorizations and technical permissions applied for with minimum procedural delay.

**Article 8**  
**Withholding, Revocation, and Limitation of Authorisation**

1. A Member State may deny an application for operating authorisations or technical permissions under Article 7 or to temporarily or permanently revoke, suspend, limit or impose conditions in relation thereto if:

- (a) the Member State is not satisfied that the carrier in respect of which the application is made:
  - (i) is a CARICOM air carrier;
  - (ii) is qualified to meet the conditions prescribed under the laws applied by the Member State to the operation of air transportation in the territory of the Member State; or
  - (iii) is not in compliance with the laws applicable under Article 9; or
- (b) the Member State which designated the air carrier is not in compliance with Article 12 or Article 13;

2. Unless immediate action is essential to prevent further non-compliance with sub-paragraph 1(a)(iii) or 1(b) of this Article, the rights established by this Article shall be exercised only after consultations with the Member State designating the air carrier.

3. Any action taken under paragraph 1 of this Article shall be communicated to the Secretary-General.

**Article 9**  
**Application of Laws**

1. The laws of a Member State relating to the operation and navigation of aircraft shall apply to designated air carriers while entering, present within, or leaving the territory of that Member State.

2. The laws of a Member State relating to the admission to, or departure from, its territory shall apply to passengers, crew and cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations).

3. Member States shall not discriminate against air carriers designated by another Member State on the grounds of nationality or in the application of laws and regulations with respect to immigration, customs and quarantine.

**Article 10**  
**Direct Transit**

1. Member States shall subject passengers, baggage, cargo and mail in direct transit through its territory and not leaving the area of the airport reserved for such purpose to no more than a simplified control procedure.

2. Notwithstanding paragraph 1, but subject to the requirements of Articles 12 and 13, passengers, baggage, cargo and mail referred to in paragraph 1, may be examined by a Member State for reasons of aviation security, narcotics control, and prevention of illegal entry or in special circumstances.
3. Baggage and cargo in direct transit shall be exempt by the Member State from customs duties and similar taxes.

### **Article 11** **Recognition of Certificates**

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by a Member State and still in force shall be recognised as valid by the other Member States for the purpose of operating the agreed services, provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to, or above, the minimum standards which may be established pursuant to the Chicago Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 should permit a difference from the minimum standards established under the Chicago Convention, and which difference has been filed with ICAO, the other Member States may request consultations between their aeronautical authorities and the aeronautical authority of the issuing Member State with a view to clarifying the practice in question.
3. Each Member State reserves the right to refuse to recognise for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by another Member State.

### **Article 12** **Safety**

1. A Member State may request consultations with another Member State at any time concerning the safety standards maintained and administered by that other Member State relating to aeronautical facilities, aircrews, aircraft or the operation of designated air carriers. Such consultations shall take place within thirty days of that request.
2. If, following such consultations, a Member State finds that another Member State does not effectively maintain and administer safety standards and requirements in any of the areas mentioned in paragraph 1 in a manner that is at least equal to the minimum standards established pursuant to the Chicago Convention, the Member State shall be notified of such findings and the steps considered necessary to conform with those minimum standards and the Member State shall take appropriate corrective action.
3. A Member State reserves the right to withhold, revoke, suspend, limit or impose conditions on the operating authorisation or technical permission of an air carrier or air carriers designated by a defaulting Member State in the event that the defaulting Member State does not take appropriate corrective action within fifteen days or such other period as may be agreed between the requesting Member State and the defaulting Member State.
4. Notwithstanding the provisions of Article 33 of the Chicago Convention, when an aircraft, whether or not registered in a Member State is operated by or on behalf of a CARICOM air carrier, the certificate of airworthiness and certificates of competency and licenses in respect of that aircraft and its

operating crew as well as the condition of the aircraft and its equipment shall be subject to inspection while within the territory of another Member State by the authorised representatives of that Member State provided that such inspection, called a ramp inspection, does not result in an unreasonable delay of the aircraft in its operation and is done on a non-discriminatory basis.

5. If a ramp inspection or a series of ramp inspections of an aircraft and its operating crew mentioned in paragraph 4 gives rise to serious concerns by the inspecting Member State that:

- (a) the aircraft or the operation of the aircraft does not comply with at least the minimum standards established pursuant to the Chicago Convention; or
- (b) there is a lack of effective maintenance and administration of safety standards established pursuant to the Chicago Convention,

the inspecting Member State shall be free to conclude that the requirements under which the certificates or licences were issued or rendered valid in respect of the aircraft or its operating crew, or under which the aircraft is operated, are not equal to, or above, the minimum standards established pursuant to the Chicago Convention.

6. A Member State reserves the right to suspend or vary, immediately, the operating authorisation or technical permission of the operator of an aircraft in the event that following a ramp inspection, a series of ramp inspections, a denial of such inspection, consultations with the operator or the Member State in which the operator has his principal place of business, the Member State concludes that such action is essential for the safe operation of the aircraft.

7. Any action taken by a Member State pursuant to paragraph 3 or 6, shall be discontinued when it is established that the basis for taking that action ceases to exist.

### **Article 13** **Aviation Security**

1. Consistent with their rights and obligations under international law, Member States reaffirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.

2. Without limiting the generality of their rights and obligations under international law, the Member States shall, in particular, act in conformity with the provisions of:

- (a) the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;
- (b) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;
- (c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
- (d) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;

- (e) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1999; and
- (f) any Convention and Protocol relating to the security of civil aviation to which the Member States adhere.

3. A Member State shall upon request of another Member State provide all necessary assistance to that Member State 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.

4. The Member States shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by ICAO and designated as Annexes to the Chicago Convention to the extent that such security provisions are applicable to the Member States.

5. Each Member State shall require that operators of aircraft of its registry, operators of aircraft who have their principal place of business in its territory, and the operators of airports in its territory act in conformity with such aviation security provisions as are applicable to the Member State. Each Member State shall advise the other Member States of any difference between its national regulations and practices and the aviation security standards of the Annexes referred to in paragraph 4 above. A Member State may request immediate consultations on such differences with any other Member State at any time.

6. When an incident, or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities occurs, the Member States shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible commensurate with minimum risk to life.

7. A Member State which has reasonable grounds to believe that another Member State is not in compliance with the provisions of this Article may request immediate consultations with that other Member State on the matter. Failure to reach a reasonable agreement within fifteen days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an air carrier designated by the other Member State. When required by an emergency, a Member State may take interim action prior to the expiry of the fifteen days.

8. Each Member State shall have the right, within sixty days following notice of its intention for that purpose, for its aeronautical authorities to conduct an assessment in the territory of the other Member State of the security measures being carried out, or planned to be carried out, by air carrier operators in respect of flights arriving from, or departing to the territory of the first Member State. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

#### **Article 14** **Commercial Opportunities**

1. Subject to this Agreement a Member State shall permit an air carrier designated by another Member State to:

- (a) establish offices in its territory for the promotion and sale of air transportation services;
- (b) engage in the sale of air transportation and related services in its territory directly, and at the air carrier's discretion, through its agents. Air carriers shall also be permitted to sell such transportation and related services and any person shall be free to purchase such transportation, in local currency or freely convertible currencies;
- (c) convert and remit to the territory of its incorporation, on demand, local revenues in excess of sums locally disbursed which shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittances on the date the carrier makes the initial application for remittance;
- (d) pay for local expenses, including purchases of fuel, in the territory of the other Member State in local currency;
- (e) in accordance with their obligations under the Revised Treaty and the laws, regulations and rules of the other Member State relating to entry, residence and employment, bring in and maintain in the territory of the other Member State managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation; and
- (f) in operating or offering the authorised services, enter into cooperative marketing arrangements such as blocked-space, code-sharing, joint ventures or leasing arrangements with:
  - (i) an air carrier or air carriers designated by a Member State;
  - (ii) an air carrier or air carriers of a third state; and
  - (iii) a surface transportation provider of any Member State,

provided that all participants to such arrangements hold the appropriate authority and meet the requirements applied to such arrangements.

2. Notwithstanding any other provision of this Agreement, the air carriers and indirect providers of cargo transportation of the Member State shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to, or from, any points within or outside the territory of the Member State, 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. Air carriers may elect to perform their own surface transport or to provide it through arrangements with other surface carriers, including surface transportation operated by other air carriers and indirect providers of cargo air transportation. Such inter-modal cargo services may be offered at a single price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

**Article 15**  
**User Charges**

1. User charges that may be imposed by the competent aeronautical authorities of a Member State on an air carrier designated by another Member State shall be reasonable, transparent, cost related, non-discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the designated air carriers of a Member State on terms not less favourable than the most favourable terms available to any other air carrier at the time the charges are assessed.

2. Each Member State shall encourage consultations on user charges between its competent charging authority or airport or air navigation service provider and the air carriers using the service and facilities provided by those charging authorities or service provider and, where practicable through those air carriers' representative organizations. 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 Member State shall further encourage its competent charging authority or service provider and such users to exchange appropriate information concerning user charges.

**Article 16**  
**Exemption From Charges On Equipment, Fuel and Aircraft Stores**

1. Subject to paragraph 2, a Member State shall to the fullest extent permitted under its national laws, exempt a designated air carrier from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges.

2. Paragraph 1 applies to:

- (a) aircraft fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores;
- (b) printed ticket stock, air waybills and printed material which bears the insignia of the air carrier printed thereon; and
- (c) publicity material distributed free of charge by a designated air carrier,

intended for use or used solely in connection with the operation or servicing of aircraft of a designated air carrier for the purpose of operating the agreed services; and

- (i) introduced into the territory of a Member State by or on behalf of a designated air carrier;
- (ii) retained on board aircraft of a designated air carrier upon arrival in, or leaving the territory of, a Member State; or
- (iii) taken on board aircraft of a designated air carrier in the territory of a Member State.

3. Paragraphs 1 and 2 apply whether or not such items are used or consumed wholly within the territory of the Member State granting the exemption, provided that the ownership of such items is not transferred in the territory of the said Member State.

4. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated air carrier of a Member State, may be unloaded in the territory of another Member State with the approval of the customs authorities of that territory. In such case, the equipment, materials or supplies may be placed under the supervision of the said authorities until such time as they are re-exported or otherwise disposed of in accordance with customs laws.

### **Article 17** **Capacity**

A Member State shall allow a designated air carrier to determine the frequency and capacity of the international and domestic air transportation it offers based on commercial considerations of the marketplace.

### **Article 18** **Pricing**

1. The prices to be applied by a designated air carrier for services under this Agreement shall be established at reasonable levels, with due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, and other commercial considerations in the marketplace.

2. A Member State may require notification of or filing with its aeronautical authorities of prices to be charged to or from its territory by designated air carriers. Such notification or filing by the designated air carriers may be required to be made not later than the initial offering of a price, regardless of the form, electronic or other, in which the price is offered.

3. A Member State may request consultations regarding any price charged by a designated air carrier for services under this Agreement. Such consultations shall be held not later than seven days after receipt of the request or such other period as agreed by the parties. The Member States shall cooperate in securing the information necessary to resolve any issues.

4. A Member State shall not take unilateral action to prevent the commencement or continuation of a price proposed to be charged or charged by a designated air carrier for air transportation between or within the territories of Member States, including in both cases transportation on an interline or intraline basis.

5. If a Member State believes that a price is inconsistent with the considerations set out in paragraph 1 it shall, as soon as may be practicable, request consultations and notify the Member State which designated that air carrier, of the reasons for its dissatisfaction.

6. Consultations under paragraph 5 shall be held not later than seven days after receipt of the request, and the Parties shall cooperate in securing the information necessary for a resolution of the issue. If the Member States reach agreement with respect to the price, each Member State shall use its best efforts to put that agreement into effect.

**Article 19**  
**Fair Competition**

1. A Member State shall, under its competition laws and the Revised Treaty, provide designated air carriers with a fair competitive environment.
2. A Member State shall take appropriate action to eliminate all forms of discrimination or anti-competitive business conduct adversely affecting the competitive position of a designated air carrier.
3. Member States agree that changing market and commercial environment may impact what conduct is considered anti-competitive but accept that the following practices may constitute anti-competitive business conduct:
  - (a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover costs of providing the services to which they relate;
  - (b) the addition of excessive capacity or frequency of service;
  - (c) the practices identified in (a) and (b) and any other practice or behaviour which is sustained rather than temporary;
  - (d) the practices in question have a serious economic effect on, or cause significant damage to, another air carrier;
  - (e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another air carrier from the market;
  - (f) behaviour indicating an abuse of dominant position.
4. If the aeronautical authority of a Member State considers that an operation intended or conducted by a designated air carrier may constitute anti-competitive business conduct in accordance with the indicators listed in paragraph 3, it may request consultations in accordance with Article 25 with a view to resolving the issue. Such request shall be in accordance with the procedures set out in Article 193 of the Revised Treaty.
5. If the Member States fail to reach a resolution of the issue through consultations, either Member State may invoke the dispute resolution mechanism under Article 27 to resolve the issue.

**Article 20**  
**Ground Handling**

1. Subject to the applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6 of the Chicago Convention, a designated air carrier shall have, in the territory of the other Member State, the right to perform its own ground handling or, at its option, the right to select among competing suppliers that provide ground handling services in whole or in part by any agent authorized by the competent authorities of a Member State to provide such services.
2. Where ground handling is precluded due to physical or operational constraints resulting from considerations of airport safety or security and where there is no effective competition between suppliers that provide ground handling



services, a designated air carrier shall be treated on a non-discriminatory basis as regards its access to perform its own ground handling or access to other ground handling services.

### **Article 21** **Leasing**

1. A designated air carrier may operate services under this Agreement by using leased aircraft which meet applicable safety and security requirements.
2. Subject to paragraph 1, a designated air carrier may use aircraft (or aircraft and crew) leased from any company, including other air carriers, provided that the leasing of the aircraft or its crew does not result in the lessor's air carrier enjoying the traffic rights granted under this Agreement.

### **Article 22** **Change of Gauge**

1. A designated air carrier may on any or all flights on the agreed services and at its option, change aircraft in the territory of any Member State or at any point along the specified routes.
2. For the purpose of change of gauge operations, a designated air carrier may, subject to national regulations and licensing requirements, use its own equipment and leased equipment, and may operate under commercial arrangements with another air carrier provided such other air carrier is entitled to provide the particular service in its own right.
3. A designated air carrier may use different or identical flight numbers for the sectors of its change of aircraft operations.

### **Article 23** **Statistics**

The aeronautical authorities of Member States shall supply each other, on request and to the extent possible, with periodic statistics or other similar data relating to the traffic carried on the agreed services.

### **Article 24** **Inadmissible and Undocumented Passengers and Deportees**

1. A Member State shall establish and maintain effective border control measures. In this regard, a Member State shall implement the Standards and Recommended Practices set out in Annex 9 to the Chicago Convention concerning inadmissible and undocumented passengers and deportees.
2. A Member State shall issue, or accept, as the case may be, the matter relating to "fraudulent, falsified or counterfeit travel documents or genuine documents presented by imposters" set out in Appendix 9 (b) to Annex 9 of the Chicago Convention, when taking action under relevant paragraphs of chapter 3 of the Annex regarding the seizure of fraudulent, falsified or counterfeit travel documents.

3. A Member State shall ensure that the detention or deportation of an inadmissible passenger is handled in such a manner as to preserve the dignity and human rights of the person.

### **Article 25** **Consultations**

1. A Member State may, at any time, request consultations with another Member State on the interpretation, application, implementation or amendment of, or compliance with, this Agreement.

2. Such consultations, which may be through discussion or by correspondence, shall be in accordance with the procedures set out in Article 193 of the Revised Treaty.

### **Article 26** **Undertaking**

The Member States undertake to elaborate a Protocol relating, inter alia, to:

- (a) essential air services;
- (b) subsidies; and
- (c) the conditions for a single security check for direct transit passengers on multi-stop intra-Community flights.

### **Article 27** **Settlement of Disputes**

Subject to the provisions of this Agreement, the settlement of disputes shall be in accordance with the provisions of Chapter Nine of the Revised Treaty.

### **Article 28** **Review**

1. This Agreement shall be reviewed at agreed time intervals or at the end of every 36 month period whichever comes earlier to take into account, among other things, changes in commercial and market environments.

2. A review of this Agreement shall also take place if requested by two or more Member States.

3. After consultation with the Member States, the Secretary-General shall notify all Member States of the agreed date and the procedures for the review of this Agreement.

### **Article 29** **Signature**

This Agreement shall be open for signature by any state or territory party to the Revised Treaty.

**Article 30**  
**Provisional Application**

Eight or more of the Member States parties to the Former Agreement, may, upon signature, or at any later date before this Agreement enters into force, declare their intention to apply this Agreement provisionally.

**Article 31**  
**Ratifications**

This Agreement and any amendments thereto shall be subject to ratification by signatories in accordance with their respective constitutional procedures. Instruments of Ratification shall be deposited with the Secretary-General who shall submit certified copies to each Member State.

**Article 32**  
**Entry into Force**

This Agreement shall enter into force upon the deposit of the seventh Instrument of Ratification in accordance with Article 31.

**Article 33**  
**Depositary**

The Secretary-General shall be the depositary of this Agreement.

**Article 34**  
**Registration with ICAO**

This Agreement and all amendments to it shall be registered with ICAO by the Secretary-General.

**Article 35**  
**Amendment**

1. Any Member State may propose an amendment to this Agreement. The text of any such amendment and the reasons therefor shall be transmitted to the Secretary-General of the Community who shall transmit them to the Government of each Member State.
2. The Member States shall be requested to communicate to the Secretary-General whether the proposed amendment is acceptable and also to submit any comments thereon.
3. If all Member States agree to the proposed amendment and deposit their respective Instruments of Ratification with the Secretary-General in accordance with Article 31 of this Agreement, the amendment shall enter into force on the thirtieth (30<sup>th</sup>) day following the deposit of the last such Instrument of Ratification.

**Article 36**  
**Accession**

After the entry into force of this Agreement, any state or territory party to the Revised Treaty or any state or territory which becomes a party to the Revised Treaty may accede to this Agreement by depositing an Instrument of Accession with the Secretary-General who shall submit a certified copy to each Member State.

**Article 37**  
**Implementation**

The Parties to this Agreement shall take all necessary action, whether of a legislative, executive or administrative nature, for the purpose of giving effect to this Agreement. Such action shall be taken as expeditiously as possible, and the Secretary-General shall be informed accordingly.

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

Done at \_\_\_\_\_ , this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

Signed by  
for the Government of Antigua and Barbuda on the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_

at

Signed by  
for the Government of Barbados on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

at

Signed by  
for the Government of Belize on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_

at

Signed by  
for the Government of the Commonwealth of Dominica on the \_\_\_\_\_ day of

\_\_\_\_\_ / \_\_\_\_\_

at

Signed by  
for the Government of Grenada on the \_\_\_\_\_ day of \_\_\_\_\_ / \_\_\_\_\_

at

Signed by  
for the Government of the Co-operative Republic of Guyana on the \_\_\_\_\_ day of

\_\_\_\_\_ / \_\_\_\_\_

at

Signed by  
for the Government of the Republic of Haiti on the \_\_\_\_\_ day of

\_\_\_\_\_ / \_\_\_\_\_

at

Signed by  
for the Government of Jamaica on the \_\_\_\_\_ day of \_\_\_\_\_ / \_\_\_\_\_

at

Signed by  
for the Government of the Federation of St. Kitts and Nevis on the \_\_\_\_\_ day of

\_\_\_\_\_ / \_\_\_\_\_

at

Signed by  
for the Government of Saint Lucia on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_  
at

Signed by  
for the Government of St. Vincent and the Grenadines on the \_\_\_\_\_ day of  
\_\_\_\_\_/\_\_\_\_\_  
at

Signed by  
for the Government of the Republic of Suriname on the \_\_\_\_\_ day of  
\_\_\_\_\_/\_\_\_\_\_  
at

Signed by  
for the Government of the Republic of Trinidad and Tobago on the \_\_\_\_\_ day of  
\_\_\_\_\_/\_\_\_\_\_  
at