

**AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF
NEW ZEALAND AND THE GOVERNMENT OF THE REPUBLIC OF
ECUADOR**

The Government of New Zealand and the Government of the Republic of Ecuador (hereinafter, "the Parties");

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

Desiring to facilitate the expansion of international air transport opportunities;

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 service options, 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 the case of New Zealand, the Minister responsible for Civil Aviation, and any person or agency authorised to perform the functions exercised by the said Minister, and, in the case of Ecuador, the Ministry of Transport and Public Works, National Civil Aviation Council and the General Directorate of Civil Aviation;

(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) "cabotage" has the meaning assigned to it in Article 7 of the Convention;

(f) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 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 simultaneously in effect for both Parties;

(g) "designated airline" means an airline designated and authorised in accordance with Article 3 (Designation and Authorisation) of this Agreement;

(h) "ICAO" means the International Civil Aviation Organization;

(i) "international air transport" means air transport that passes through the airspace over the territory of more than one State;

(j) "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;

(k) "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;

(l) "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) The designated airlines of each Party shall operate only to and from the international airports of the other Party.

(3) Nothing in this Article shall be considered as granting the airlines of a Party the right to board, in the territory of the other Party, passengers, baggage, or cargo transported for compensation and destined to another point in the territory of the 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 aeronautical authority of the other Party in writing 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 minimal 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 regulatory control of that airline is vested in the Party designating the airline;

(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) of this Agreement.

Article 4

Revocation of Authorisation

(1) Either Party may refuse, 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 or does not have its principal place of business in the territory of the Party designating the airline; or

(b) effective regulatory control of that airline is not vested in the Party designating the airline; or

(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) and Article 7 (Aviation Security) of this Agreement.

(2) Unless immediate action is essential to prevent further noncompliance with subparagraphs (1)(c) or (1)(d) of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

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) If the privileges or conditions of the licences or certificates referred to in paragraph (1) of this Article, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with ICAO, the other Party may request consultations between the aeronautical authorities in conformity with Article 12 (Consultations) of this Agreement with a view to clarifying the practice in question.

(3) Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that request.

(4) If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph (3) of this Article that meet the standards established at that time pursuant to the Convention, the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO standards. The other Party shall then take appropriate corrective action within an agreed time period.

(5) Pursuant to Article 16 of the Convention, it is further agreed that any aircraft performing international air transport by or on behalf of an airline of one Party, to or from the territory of another Party, may, while within the territory of the other Party, be the subject of a search (in this Article called "ramp inspection") by the authorised representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this ramp inspection is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the standards established at that time pursuant to the Convention.

(6) If any such ramp inspection or series of ramp inspections give rise to:

- (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at the time pursuant to the Convention; or
- (b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention;

the Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention. This same determination may be made in the case of denial of access for a ramp inspection.

(7) When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorisation of an airline or airlines of the other Party.

(8) Any action by one Party in accordance with paragraph (7) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

(9) With reference to paragraph (4) of this Article, if it is determined that one Party remains in non-compliance with ICAO standards when the agreed time period has elapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

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, the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, signed at Montreal on 24 February 1988, and the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, signed at Montreal on 1 March, 1991, 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 aviation.

(3) The Parties shall, in their mutual relations, act in conformity with the aviation security provisions and appropriate recommended practices established by ICAO 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 such aircraft, of their 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 fifteen (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, or to prevent further non-compliance with the provisions of this Article, a Party may take interim action prior to the expiry of fifteen (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 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) 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.

(4) Each airline shall have the right to convert and remit abroad, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions 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.

(5) The transfer of funds and the conversion of foreign currency shall be subject to the tax legislation of each Party. If there is an agreement between the Parties to avoid double taxation, the provisions of that agreement shall prevail.

(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, with any other airline, including airlines of third countries, provided that all airlines in such arrangements hold the appropriate authority and meet the requirements normally applied to such arrangements.

(8) In addition to the rights granted in paragraph (7) of this Article, the designated airlines of each Party may, in operating or holding out international air transport pursuant to this Agreement, use aircraft (or aircraft and crew) leased from any company, including other airlines, provided all participants in such arrangements hold the appropriate authority and meet the requirements applied to such arrangements.

(9) 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. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground-handling services shall be available on an equal basis to all airlines, and shall be comparable to the kind and quality of services which would be available if self-handling were possible.

(10) 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) Each Party shall on the basis of reciprocity exempt a designated airline of the other Party to the fullest extent possible under its national law from customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale or to be used solely in connection with the operation or servicing of aircraft) and other items, such as printed ticket stock and air waybills, distributed free of charge by that designated airline, intended for use or used solely in connection with the operation or servicing of aircraft operating the agreed services.

(2) The exemptions granted by this Article shall apply to the items referred to in paragraph (1) of this Article:

- (a) introduced into the territory of the Party by or on behalf of the designated airline of the other Party;
- (b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of the other Party; or
- (c) taken on board aircraft of the designated airline of one Party in the territory of the other Party and intended for use in operating the agreed services; whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.

(3) The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that Party. In such case, they may be placed under supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

(4) The exemptions provided for by this Article shall also be available in situations where the designated airlines of either Party have entered into arrangements with another airline or airlines, for the loan or transfer in the territory of the other Party, of the regular equipment and the other items referred to in paragraph (1) of this Article, provided that such other airline or airlines similarly enjoy such exemptions from that other Party.

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 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 such filing requirements and procedures.

Article 11

Pricing

Each Party shall allow prices for air services to be decided by each designated airline based on commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- (a) prevention of unreasonably discriminatory prices or practices;
- (b) protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- (c) protection of airlines from prices that are artificially low due to 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 sixty (60) days from the date the other Party receives the request unless otherwise agreed.

Article 13

Amendment

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

(2) Any amendments so agreed shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been met.

Article 14

Settlement of Disputes

(1) Should any dispute arise between the Parties regarding the interpretation or application of this Agreement, the Parties shall first attempt to resolve it through negotiation.

(2) If the Parties fail to resolve the dispute through negotiation, the dispute may be resolved through diplomatic channels, and in accordance with the laws and regulations of each Party.

Article 15

Termination

(1) 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 Secretary General of ICAO. 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.

(2) In the absence of acknowledgement of the receipt of a notice of termination by the other Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the Secretary General of ICAO.

Article 16

Registration with ICAO

(1) This Agreement and all amendments thereto shall be registered with ICAO.

(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.

Article 17

Entry into Force

This Agreement shall enter into force on the date of the last notification by which the Parties communicate to each other their compliance with the internal procedures required by their legislation. It will remain in force for an indefinite period, unless one of the Parties decides to denounce it.

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

DONE at this day of , in two copies, in the English and Spanish languages, both texts being equally authentic.

For the Government of
the Republic of Ecuador

For the Government of
New Zealand

ANNEX I

Scheduled International 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 airline or airlines designated by the Government of New Zealand

1. For passenger and cargo services in combination: from points behind New Zealand, via New Zealand and intermediate points to a point or points in the Republic of Ecuador and beyond.
2. For exclusive cargo services: from points behind New Zealand, via New Zealand and intermediate points to a point or points in the Republic of Ecuador and beyond.

B. Routes for the airline or airlines designated by the Government of Ecuador

1. For passenger and cargo services in combination: from points behind Ecuador, via Ecuador and intermediate points to a point or points in New Zealand and beyond.
2. For exclusive cargo services: from points behind Ecuador, via Ecuador and intermediate points to a point or points in New Zealand and beyond.

The designated airlines of each Party may operate any number of frequencies on the authorised routes.

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;
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, provided that the service serves a point in the territory of the Party designating the airline.

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, at any point on the route, in type or number of aircraft operated provided that, in the outbound direction, transport beyond such point is a continuation of transport from the territory of the Party that has designated the airline and, in the inbound direction, transport to the territory of the Party that has designated the airline is a continuation of transport from beyond such point.

ANNEX II

Non-Scheduled International Air Transport

(1) 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.

(2) 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.