

AIR TRANSPORT AGREEMENT
BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA

The Government of the Federative Republic of Brazil

and

The Government of the United States of America
(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 make it possible for airlines to offer the traveling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to facilitate the expansion of international air transport opportunities;

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 jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

Being Parties to the Convention on International Civil Aviation, done at Chicago December 7, 1944;

Have agreed as follows:

Article 1
Definitions

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

- 1) "Aeronautical authorities" means, in the case of the United States, the Department of Transportation and in the case of Brazil, the National Civil Aviation Agency (ANAC), and any person or agency authorized to perform functions exercised by the Department of Transportation or said National Civil Aviation Agency (ANAC);
- 2) "Agreement" means this Agreement and any amendments thereto;
- 3) "Air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, scheduled or charter, for remuneration or hire;
- 4) "Airline of a Party" means an airline that has received its Air Operator's Certificate (AOC) from and has its principal place of business in the territory of that Party;

5) "Convention" means the Convention on International Civil Aviation, done at Chicago December 7, 1944, and includes:

a. any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, 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 both Parties;

6) "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;

7) "International air transportation" means air transportation that passes through the airspace over the territory of more than one State;

8) "Price" means any fare, rate, or charge for the carriage of passengers, baggage, or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate, or charge;

9) "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo, or mail in air transportation;

10) "Territory" means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and

11) "User charge" means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services, including related services and facilities.

Article 2 Grant of Rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation 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;

c) the right to perform international air transportation between points on the following routes:

i. for airlines of the United States, from points behind the United States via the United States and intermediate points to any point or points in Brazil and beyond;

ii. for airlines of Brazil, from points behind Brazil via Brazil and intermediate points to any point or points in the United States and beyond; and

d) the rights otherwise specified in this Agreement.

2. Each airline of a Party may, on any or all flights and at its option:

a) operate flights 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 Parties 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;

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 either Party;

h) carry transit traffic through the other Party's territory; 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, provided that the transportation is part of a service that serves a point in the homeland of the airline.

3. On any segment or segments of the routes above, any airline of a Party may perform international air transportation 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, the transportation beyond such point is a continuation of the transportation from the homeland of the airline and, in the inbound direction, the transportation to the homeland of the airline is a continuation of the transportation from beyond such point.

4. 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, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

Charter Operations

5. Each Party shall authorize passenger, cargo, and combination charter operations without limitation on the number of flights. Nothing in this paragraph shall limit the rights of a Party to require airlines of both Parties to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

Article 3

Authorization

Each Party, on receipt of applications from an airline of the other Party, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided that:

- a) substantial ownership and effective control of that airline are vested in the other Party, nationals of that Party, or both;
- b) the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
- c) the other Party is maintaining and administering the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security) of this Agreement.

Article 4 Revocation of Authorization

1. Either Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline where:

- a) that airline is not an airline of the other Party under Article 1(4);
- b) substantial ownership and effective control of that airline are not vested in the other Party, the Party's nationals, or both; or
- c) that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement.

2. Unless immediate action is essential to prevent further noncompliance with subparagraph 1c 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, suspend, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 6 (Safety) or Article 7 (Aviation Security) of this Agreement.

Article 5 Application of Laws

1. The laws and regulations of a Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be complied with by such aircraft upon entering, when departing from, or while within the territory of the first Party.

2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations 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, crew or cargo of the other Party's airlines.

Article 6 Safety

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses 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 airlines of that other Party

3. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer the safety standards and requirements in the areas referred to in paragraph 2 of this Article 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 within a reasonable time period.

4. Each Party reserves the right to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time and to take immediate action, prior to consultations, as to such airline or airlines if the other Party is not maintaining and administering the standards referred to in paragraph 3 of this Article and immediate action is essential to prevent further noncompliance.

5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.

6. With reference to paragraphs 3 and 4, if it is determined that one Party remains in non compliance with ICAO standards when a reasonable 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. The Parties affirm 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 Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal February 24, 1988, and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal March 1, 1991, as well as with any other convention relating to the security of civil aviation that is binding on both 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 standards 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 that 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 and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as 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 special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, 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.

6. Each Party shall allow, within sixty (60) days following notice, the appropriate authorities of the other Party to conduct an assessment in the territory of the first Party of the security measures being carried out by aircraft operators in respect of flights between the territories of the Parties and those flights of aircraft operators with a registry in the territory of the Party conducting the assessment. The administrative arrangements for the conduct of such assessments shall be agreed between the appropriate authorities of the Parties and implemented without delay so as to ensure that assessments will be conducted expeditiously. The assessment reports will be held in confidence by the Parties.

7. With full regard for each Party's responsibility for ensuring effective implementation of the Standards and appropriate Recommended Practices set forth in Annex 17 to the Convention, and as recognized in paragraph 3 of this Article, the Parties shall have the right, and shall

provide all necessary assistance to each other, for their appropriate authorities to conduct technical airport security visits in the territory of the other Party for the purpose of verifying that the security measures required under Annex 17 to the Convention are effectively being carried out. The appropriate authorities of the Parties shall coordinate such visits, providing each other at least sixty (60) days written notice, to identify the airports to be visited, the dates of the visits, and the scope of each visit. The reports from technical airport security visits will be held in confidence by the Parties.

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 within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

Article 8 Commercial Opportunities

1. Each Party shall accord airlines of the other Party the right to sell and market international air services in its territory directly, or through agents or other intermediaries of the airline's choice, including the right to establish offices.

2. Each airline shall have the right to sell air transportation in the currency of that territory, or in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.

3. An airline of a Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

Airline Representatives

4. The airlines of each Party shall be entitled, on the basis of reciprocity, and 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 transportation.

5. These staff requirements may, at the option of the airline or airlines of one Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Party and authorized to perform such services for other airlines.

6. The representatives and staff shall be subject to the laws and regulations in force of the other Party, and consistent with such laws and regulations:

a) each Party intends, with the minimum of delay, to adjudicate the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 4 of this Article; and

b) both Parties intend to facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.

Ground-handling

7. Each airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at the airline's 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 physical limitations of facilities and airport safety. Where such considerations preclude self-handling, ground services shall be available on a non-discriminatory 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 as if self-handling were possible.

Currency Conversion and Remittance of Earnings

8. Each airline shall have the right to convert and remit to its country and, except where inconsistent with generally applicable law or regulation, any other country or countries of its choice, 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.

9. The conversion and remittance of such revenues shall be permitted in conformity with the applicable laws and regulations, provided that such laws and regulations do not diminish the rights granted by this Agreement and such transactions are not subject to any administrative or exchange charges except those normally made by banks for the carrying out of such conversion and remittance.

10. The provisions of this Article do not exempt the airlines of either Party from the duties, taxes and contributions to which they are subject, provided that such duties, taxes and contributions do not diminish the rights granted by this Agreement.

11. 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.

Code Sharing

12. In operating or holding out the authorized services under this Agreement, any airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing, or leasing arrangements, with:

- a) an airline or airlines of either Party;
- b) an airline or airlines of a third country; and
- c) a surface transportation provider of any country;

provided that all participants in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

Intermodal Services

13. Airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including to and from all airports with customs facilities and 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. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Article 9

Customs Duties and Charges

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

2. There 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 transportation, 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 transportation;

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 transportation, 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 transportation, even when these materials 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 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 User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the

competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 15 of this Agreement, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 11 Competition

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

Capacity

2. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation 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 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 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, programs for charter 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 authorized in this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on airlines of the other Party.

Article 12 Pricing

1. Each Party shall allow prices for air transportation to be established by airlines of both Parties based upon commercial considerations in the marketplace.

2. Either Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Party. Such notification or filing by the airlines may be required to be made no earlier than the initial offering of a price.

Article 13 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.

Article 14 Amendment

The Parties may amend this Agreement, at any time, in writing. Such amendments shall enter into force on the date of receipt of the later note in an exchange of diplomatic notes between the Parties confirming that all necessary internal procedures for entry into force of the amendments have been completed.

Article 15 Settlement of Disputes

Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing) of this Agreement, that is not resolved within 30 days of the date established for consultations pursuant to a request under Article 13 of this Agreement, shall be settled through diplomatic channels and, if not settled, be referred by agreement of the Parties to mediation. If the Parties do not so agree, the dispute shall be submitted to arbitration at the request of either Party, upon written notice through diplomatic channels. Arbitration shall be carried out in accordance with the procedures agreed to by the Parties.

Article 16 Termination

Either Party may, at any time, give notice in writing, through diplomatic channels, 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) at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Parties before the end of this period.

Article 17 Registration with ICAO

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

Article 18 Entry into Force

1. This Agreement shall enter into force on the date of receipt of the later note in an exchange of diplomatic notes between the Parties confirming that all necessary internal procedures for entry into force of the Agreement have been completed.

2. Upon entry into force, this Agreement shall supersede the Agreement between the Government of the United States of America and the Government of the Federative Republic of Brazil on Air Transport, signed at Brasilia March 21, 1989, as amended.

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

Done at Brasilia, this 19th day of March, 2011, in two originals, in the Portuguese and English languages, both texts being equally authentic.