

July 23, 1996

AIR TRANSPORT AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

The Government of the United States of America and the Government of the Republic of South Africa (hereinafter, "the Parties");

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

Desiring to facilitate the expansion of international air transport opportunities;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not predatory or discriminatory and do not represent abuse of a dominant position, 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 jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

Being Parties to the Convention on International Civil Aviation opened for signature at Chicago on December 7, 1944; and

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

Have agreed as follows:

ARTICLE 1Definitions

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

- a. "Aeronautical authorities" means, in the case of the United States, the Department of Transportation, or its successor, and in the case of South Africa, the Ministry responsible for Civil Aviation, or its successor;
- b. "Agreement" means this Agreement, its Annex, and any amendments thereto;
- c. "Air transportation" means any operation performed by aircraft for the public carriage of traffic in passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- d. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
  - (1) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties; and
  - (2) 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.
- e. "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;
- f. "Full cost" means the cost of providing service plus a reasonable charge for administrative overhead;
- g. "International air transportation" means air transportation which passes through the air space over the territory of more than one State;
- h. "Price" means any fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- i. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;
- j. "Territory" means the land areas under the sovereignty, jurisdiction, protection, or trusteeship of a Party, and the territorial waters adjacent thereto; and

- k. "User charge" means a charge imposed on airlines for the provision of airport, air navigation or aviation security facilities and 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; and
  - c. the rights otherwise specified in this Agreement.
2. Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the right to take on board, in the territory of the other Party, passengers, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.
3. If because of armed conflict, political disturbances or developments, or special and unusual circumstances, the designated airline of one Party is unable to operate a service on its normal routes, the other Party shall use its best efforts to facilitate the continued operation of such routes, including the temporary granting of alternative rights, as mutually decided by the Parties.

## ARTICLE 3

### Designation and Authorization

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels, and shall identify whether the airline is authorized to conduct the type of air transportation specified in the Annex.
2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, the other Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

- a. substantial ownership and effective control of that airline are vested in the Party designating the airline, nationals of that Party, or both;
- b. the designated 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 Party designating the airline is maintaining and administering the standards set forth in Article 6 (Safety) and Article 7 (Aviation Security).

#### ARTICLE 4

##### Revocation of Authorization

1. Each Party may revoke, suspend or limit the operating authorizations or technical permissions of an airline designated by the other Party where:
  - a. substantial ownership and effective control of the airline are not vested in the other Party, the other Party's nationals, or both;
  - b. that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement;
  - c. the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).
2. Unless immediate action is essential to prevent further noncompliance with subparagraphs 1 (b) or 1 (c) of this Article, the right established by this Article shall be exercised only after consultation with the other Party.
3. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 7 (Aviation Security).

#### ARTICLE 5

##### Application of Laws

1. While entering, within or leaving the territory of one Party, its laws and regulations 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 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.
3. In the application of the laws and regulations referred to in paragraphs 1 and 2 above, neither Party shall discriminate against the airlines of the other Party solely on the basis of nationality.

## 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 which 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 the designated airlines. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

ARTICLE 7Aviation 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 Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971.
2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of 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 all 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 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 to observe the security provisions required by the other Party for entry into the territory of that other Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their 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 or 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. 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, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

## ARTICLE 8

### Commercial Opportunities

1. The airlines of each Party may establish offices in the territory of the other Party for the promotion and sale of air transportation.
2. The designated airlines of each Party may, in accordance with the laws and regulations of the other Party relating to entry, residence and employment, 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.
3. Each designated airline may 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. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.
4. Any airline of each 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 agent. Each airline may sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
5. Each airline may convert and remit to its country, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions.

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. Notwithstanding any other provision of this Agreement, airlines 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 transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable law 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 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 designated airlines of the other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flights), 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 (1) imposed by the national authorities, and (2) 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, 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 (including hydraulic fluids) 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. baggage and cargo in direct transit.
3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article (including such items as may be unloaded with the prior approval of those authorities) may be required to be kept under the supervision or control of the authorities until they are otherwise disposed of.
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, equitably apportioned among categories of users and based upon sound

economic principles as set forth in paragraph 2 of this Article. 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 full cost 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 authority to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views, and have their views taken into account, before changes are made.
4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless (1) 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 (2) 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

##### 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 transportation covered by this Agreement.

2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.
3. 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, in terms of this Agreement, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
4. 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 the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.
5. Neither Party shall require the filing of schedules or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions foreseen by paragraph 3 of this Article or as may be specifically authorized in an Annex to 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 designated airlines of the other Party.

## ARTICLE 12

### Pricing

1. Each Party shall allow prices for air transportation to be established by each designated airline based upon 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 governmental subsidy or support.

2. Each 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. Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. If a Party permits an airline to file a price on short notice, the price shall become effective on the proposed date for traffic originating in the territory of that Party.
3. Until April 1, 1999, if a Party believes that a price proposed to be charged by an airline of the other Party for international air transportation between the territories of the Parties is inconsistent with considerations set forth in paragraph 1 of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible. After such notification, the Party expressing dissatisfaction may take unilateral action to prevent the inauguration of such price, but only with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory.
4. As of April 1, 1999, neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by an airline of either Party for international air transportation between the territories of the Parties, including transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.
5. Notwithstanding any other provision of this Article, each Party shall permit any airline to institute or continue a price which matches or which provides for substantially similar terms and conditions as any wholesale or retail price which is approved or permitted for other airlines.

ARTICLE 13Consultations

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 14Settlement of Disputes

1. Any dispute arising under this Agreement which is not resolved by a first round of formal consultations, except those which may arise under paragraph 4 of Article 12 (Pricing), may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall at the request of either Party be submitted to arbitration in accordance with the procedures set forth below.
2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:
  - a. Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
  - b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules consistent with paragraphs 4, 5, and 6. The tribunal, once formed, may recommend interim relief pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

4. Except as otherwise agreed or as directed by the tribunal, each Party shall submit a memorandum within 45 days from the date that the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.
5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.
6. The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.
7. Each Party shall, to the degree consistent with its national law, give full effect to any decision or award of the arbitral tribunal.
8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

#### ARTICLE 15

##### Amendments

1. If either Party considers it desirable to amend any provision of this Agreement, entry into force of such amendment, if agreed between the Parties, shall be dependent upon the completion of and compliance with the relevant constitutional requirements of the respective States, which shall be confirmed by an exchange of diplomatic notes.
2. In the event of the conclusion of any general multilateral convention concerning air transportation by which both Parties become bound, the Parties shall consult to determine whether and to what extent the present Agreement should be amended.

ARTICLE 16

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 communicated simultaneously to the International Civil Aviation Organization.
2. In the case provided for in paragraph 1, the Agreement shall terminate (12) months after the date of notification, unless the notice to terminate is withdrawn by agreement of the Parties before the expiry 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

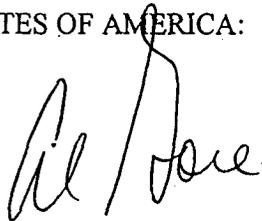
Entry into Force

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

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

DONE at Washington this 23rd day of July, 1996, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF  
THE REPUBLIC OF SOUTH AFRICA:



ANNEX  
Scheduled Air Service

Section 1  
Routes

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

A. Routes for the airline or airlines designated by the Government of the United States:

A. For passenger and cargo combination service:

1. From a point or points in the United States via intermediate points <sup>1, 2</sup> to Cape Town, Johannesburg and Durban, and (a) beyond to five code-share-only points <sup>2</sup> within South Africa with an airline or airlines of South Africa without local traffic rights; and (b) to points beyond South Africa on a blind sector basis.
2. From a point or points in the United States via intermediate points on U.S. Route 1 to Cape Town, Johannesburg and Durban on a code-share-only basis with an airline or airlines of South Africa, and (a) beyond without local traffic rights to the code-share-only points on U.S. Route 1; and (b) to points beyond South Africa on a blind sector basis. There are no local traffic rights between intermediate points and South Africa on this route.
3. From a point or points in the United States via a total of four intermediate points <sup>2, 3, 4</sup> in Europe, South America and/or Canada on a third-country code-share-only basis, and beyond via any intermediate point in Africa to Johannesburg, Cape Town and Durban, and (a) beyond on a code-share-only basis with an airline or airlines of South Africa to the code-share-only points on U.S. Route 1 without local traffic rights; and (b) to points beyond South Africa on a blind sector basis with the same third-country airline. There are no local traffic rights between intermediate points and South Africa.

B. For all-cargo service:

From a point or points in the United States via intermediate points <sup>5</sup> to a point or points in South Africa and beyond. <sup>5, 6</sup>

<sup>1</sup> Local intermediate traffic rights may be exercised at Ilha do Sal, Cape Verde, and a total of three other points to be selected from among the following nations: Cote d'Ivoire, Senegal, Sierra Leone, Morocco, Liberia, Mauritania, Mali, Niger, Chad, Burkina Faso, Sudan, Tunisia, Algeria, Togo, Central African Republic, Guinea, Guinea Bissau, Benin, and Libya. As of April 1, 1996, airlines of the United States may serve Ilha do Sal plus one point named above with local traffic rights. After April 1, 1997, one additional point from the list above may be served with local traffic rights; after April 1, 2000, an additional point from the list above may be served with local traffic rights.

<sup>2</sup> The Government of the United States will notify the Government of South Africa of its choices through diplomatic note. These selections may be changed by the Government of the United States, following 30 days' notice to the Government of South Africa.

<sup>3</sup> No more than one U.S. airline may hold out third-country code-share service over the same intermediate point in Europe, South America, and/or Canada.

<sup>4</sup> These intermediate points will be phased in according to the phase in schedule for designations as set out in paragraph 1 of Section 2 of this Annex.

<sup>5</sup> The total number of intermediate and/or beyond points that may be served with traffic rights are as follows:

from April 1, 1996 to March 31, 1997--2 (intermediate points only);

from April 1, 1997 to March 31, 1998--4 points;

from April 1, 1998 to March 31, 1999--5 points;

from April 1, 1999 to March 31, 2000--7 points;

and from April 1, 2000 to March 31, 2001--9 points.

After April 1, 1997, these intermediate and beyond points may be used in any combination.

<sup>6</sup> Each designated airline may, on any or all flights and at its option, serve points behind any point in its territory with or without change of aircraft or flight number.

B. Routes for the airline or airlines designated by the Government of the Republic of South Africa:

A. For passenger and cargo combination service:

1. From a point or points in South Africa via intermediate points <sup>1, 2</sup> to Miami, New York and four U.S. points <sup>2</sup>, and (a) beyond to ten code-share-only points <sup>3</sup> within the United States with an airline or airlines of the United States without local traffic rights; and (b) to points beyond the United States on a blind-sector basis.

2. From a point or points in South Africa via intermediate points on Route 1 to New York, Miami, and the four U.S. points on South Africa Route 1 on a code-share-only basis with an airline or airlines of the United States, and (a) beyond without local traffic rights to the code-share-only points on South Africa Route 1; and (b) to points beyond the United States on a blind-sector basis.

There are no local traffic rights between the intermediate points and the United States on this route.

3. From a point or points in South Africa via a total of four intermediate points <sup>2, 4, 5</sup> in Europe, South America and/or Canada on a third-country code-share-only basis to New York, Miami and the four points on South Africa Route 1, and (a) beyond on a code-share-only basis with U.S. airlines to the code-share-only points on South Africa Route 1 without local traffic rights; and (b) to points beyond the United States on a blind sector basis with the same third-country airline. There are no local traffic rights between the intermediate points and the United States on this route.

B. For all-cargo service:

From a point or points in South Africa via intermediate points <sup>6</sup> to a point or points in the United States and beyond. <sup>6, 7</sup>

<sup>1</sup> Local intermediate traffic rights may be exercised via Ilha do Sal, Cape Verde, and a total of three other points in Africa. As of April 1, 1996, airlines of South Africa may serve Ilha do Sal plus one other point in Africa with local traffic rights. After April 1, 1997, one additional point in Africa may be served with local traffic rights; after April 1, 2000, an additional point in Africa may be served with local traffic rights. Consistent with the schedule set forth above, in lieu of one point in Africa other than Ilha do Sal, South Africa may select one point in South America to be served with local traffic rights.

<sup>2</sup> The Government of South Africa will notify the Government of the United States of its choices by diplomatic note. These selections may be changed by the Government of South Africa, following 30 days' notice to the Government of the United States.

<sup>3</sup> This number increases to 21 as of November 1, 1997 and to 25 as of November 1, 1998. However, if the United States is entitled to designate 2 carriers for U.S. Route 3 on a date earlier than November 1, 1997, then the increase to 21 code-share points for South Africa will come into effect on that earlier date. Similarly, if the United States is entitled to designate 4 carriers for U.S. Route 3 before November 1, 1998, then the increase to 25 code-share points for South Africa will come into effect on that earlier date.

<sup>4</sup> No more than one South African airline may hold out third-country code-share service over the same intermediate point in Europe, South America, and/or Canada.

<sup>5</sup> These intermediate points will be phased in according to the phase in schedule for designations as set out in paragraph 1 of Section 2 of this Annex.

<sup>6</sup> The total number of intermediate and/or beyond points that may be served with traffic rights are as follows:

from April 1, 1996 to March 31, 1997--2 (intermediate points only);

from April 1, 1997 to March 31, 1998--4 points;

from April 1, 1998 to March 31, 1999--5 points;

from April 1, 1999 to March 31, 2000--7 points;

and from April 1, 2000 to March 31, 2001--9 points.

After April 1, 1997, these intermediate and beyond points may be used in any combination.

<sup>7</sup> Each designated airline may, on any or all flights and at its option, serve points behind any point in its territory with or without change of aircraft or flight number.

Section 2  
Number of Designations for Third-Country Code-Share Services

Notwithstanding Article 3, paragraph 1, designations for third-country code-share services under U.S. Route A3 and South Africa Route A3 will be phased in as follows:

From November 1, 1997: 2 designations for each Party, each over one intermediate point;

From November 1, 1998: 1 additional designation for each Party, over one intermediate point;

From November 1, 1999: 1 additional designation for each Party, over one intermediate point.

However, South Africa may elect to designate an airline for third-country code-share services before November 1, 1997. If it does so, then a) the first two designations for the United States will be available six months after the South African designation is made, and b) the subsequent designations for each Party will be available one and two years, respectively, after the date on which the United States is entitled to make its initial designations.

Each Party may allocate to one of its airlines two or more of these designations.

Each Party may change the intermediate point served by any of its designated airlines following thirty days' notice to the other Party.

Section 3  
Number of Frequencies

1. Notwithstanding Article 11, paragraph 3:
  - A. The airlines of each Party designated for service on U.S. and South Africa Routes A1 and A2 may operate a total of <sup>1</sup>:
    - from April 1, 1996 to March 31, 1997--11 weekly roundtrip frequencies;
    - from April 1, 1997 to March 31, 1998--12 weekly roundtrip frequencies;
    - from April 1, 1998 to March 31, 1999--14 weekly roundtrip frequencies;
    - from April 1, 1999 to March 31, 2000--17 weekly roundtrip frequencies; and
    - from April 1, 2000 to March 31, 2001--21 weekly roundtrip frequencies.
  - B. With respect to services provided pursuant to U.S. and South Africa Route A1, ~~no more than seven weekly roundtrip frequencies~~ per Party may be operated to and from any U.S. gateway for the period April 1, 1996 to September 30, 1997.
  - C. The airlines of each Party designated for service on U.S. and South Africa Route B may operate a total of <sup>1</sup>:
    - from April 1, 1996 to March 31, 1997--4 weekly roundtrip frequencies;
    - from April 1, 1997 to March 31, 1998--4 weekly roundtrip frequencies;
    - from April 1, 1998 to March 31, 1999--9 weekly roundtrip frequencies;
    - from April 1, 1999 to March 31, 2000--9 weekly roundtrip frequencies; and
    - from April 1, 2000 to March 31, 2001--9 weekly roundtrip frequencies.

2. For the purposes of this section, a frequency is defined for an airline of a Party as one round-trip aircraft operation to and from the first point of arrival in the territory of the other Party.
3. An airline of one Party may code share with another airline or airlines of the same Party on that Party's Route A1. In such cases, each round-trip aircraft operation to and from the first point of arrival in the territory of the other Party shall count as one frequency for purposes of the frequency entitlements set out in paragraphs 1A and 1B of this Section. For the United States, there shall be unlimited code-share frequencies and points behind the U.S. gateway. For South Africa, there shall be unlimited code-share frequencies and points behind the South African gateway.

<sup>1</sup> Bilateral code-share frequencies for services under U.S. Routes A2 and B and South Africa Routes A2 and B are counted as one frequency against the operator of the aircraft that operates the segment(s) between the U.S. gateway and the South Africa gateway. Bilateral code-share frequencies are not counted against either airline where both operate a segment from their own homeland to an intermediate point in a third country.

Section 4  
Operational Flexibility

Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve points on the routes in any combination and in any order (which may include serving intermediate points as beyond points and beyond points as intermediate points);
4. omit stops at any point or points;
5. serve any intermediate point or beyond point not designated on the routes in Section 1 above on a blind sector basis; and
6. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided, that the service begins or terminates in the territory of the Party designating the airline.

Section 5  
Change of Gauge

On any segment or segments of the routes above, a designated airline 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 territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation beyond such point.

Section 6  
Cooperative Arrangements

Subject to the above provisions of this Annex, in operating or holding out the authorized services on the agreed routes, provided that all airlines in such arrangements i) hold the appropriate authority and ii) meet the requirements normally applied to such arrangements, any designated 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; and
- B. an airline or airlines of a third country, provided that such third country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country.

Section 7  
Duration and Review of Annex

This Annex shall remain in force for five years, and thereafter unless the Parties otherwise agree. The Parties shall consult six months in advance of the end of this five year period to review how the United States-South Africa market has developed in order to consider increases in services and other modifications to facilitate and promote growth in the market.