

CIVIL AVIATION

Transport Services

**Agreement Between the
UNITED STATES OF AMERICA
and AUSTRALIA**

Signed at Washington March 31, 2008

with

Annexes

and

Agreement Amending the Agreement

Effected by Exchange of Notes at
Washington May 30 and June 18, 2013



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

AUSTRALIA

Civil Aviation: Transport Services

*Agreement signed at Washington
March 31, 2008;
Entered into force June 18, 2013.
With annexes.
And agreement amending the agreement.
Effected by exchange of notes at
Washington May 30 and June 18, 2013;
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AIR TRANSPORT AGREEMENT
BETWEEN
THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF
AUSTRALIA

**AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA**

The Government of the United States of America and the Government of Australia (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 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 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 Australia, the Department of Infrastructure, Transport, Regional Development and Local Government, and any person or agency authorized to perform functions exercised by the Department of

Transportation or said Department of Infrastructure, Transport, Regional Development and Local Government;

2. "Agreement" means this Agreement, its Annexes, 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 is licensed by 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 in force for both Parties;

6. "designated airline" means an airline designated and authorized in accordance with Article 3 (Designation and Authorization) of this Agreement;

7. "full cost" means the cost of providing facilities and services, which may include a reasonable charge for administrative overhead;

8. "homeland" means the territory of the Party by which an airline was granted its Air Operator's Certificate (AOC) and in which it has its principal place of business;

9. "international air transportation" means air transportation that passes through the airspace over the territory of more than one State;

10. "ICAO" means the International Civil Aviation Organization;

11. "price" means any fare, tariff, rate, or charge for the carriage of passengers, baggage, or cargo (excluding mail) in international 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, tariff, rate, or charge;

12. "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;

13. "territory" means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and

14. "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

Each Party grants to the other Party the following rights for the conduct of international air transportation by the airlines of the other Party:

1. the right to fly across its territory without landing;
2. the right to make stops in its territory for non-traffic purposes; and
3. the rights otherwise specified in this Agreement.

Article 3

Designation and Authorization

1. Each Party shall have the right to designate as many airlines as it wishes to conduct scheduled 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 state

that the airline is authorized to conduct the type of transportation specified in Annex I.

2. Each Party, on receipt of a designation, and of applications from a designated airline of the other Party, or applications from an airline of the other Party intending to operate charter international air transportation, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

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).

Article 4

Revocation of Authorization

1. Either Party may revoke, suspend, limit, or impose conditions on 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 other 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 1 c 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).

Article 5

Application of Laws

1. The laws, regulations and rules 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, 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, 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. Such consultations shall take place within forty-five days of a request. 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.

3. 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 aforementioned standards and immediate action is essential to prevent further noncompliance. Any action taken in accordance with this paragraph shall be discontinued promptly upon compliance by the other Party with the safety provisions of this Article.

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, and 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, as well as with any other convention relating to the security of civil aviation to the degree in force for 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 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. 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. Any action taken in accordance with this paragraph shall be discontinued promptly upon compliance by the other Party with the security provisions of this Article.

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 transportation and to use the services and personnel of any organization, company or airline operating in the territory of the other Party which is allowed to perform such services.
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 transportation. Consistent with such laws and regulations, each Party intends to act expeditiously in processing the necessary employment authorizations and other documents for staff referred to in this paragraph.
3. 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. These 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; 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. 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.
5. 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.

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 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 (land or maritime) 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.

8. 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 (land or maritime) 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 or otherwise subject to customs control 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. 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. Each Party shall take all steps within its power to ensure that bodies responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services levy charges on airlines only to the extent the charges are just, reasonable, not unjustly discriminatory, and equitably apportioned amongst categories of users.

2. Reasonable charges reflect, but do not exceed, the full cost to the competent charging authorities of providing the facilities and services. These charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made should be provided on an efficient and economic basis. For charges to be not unjustly discriminatory, they should be levied on foreign airlines on terms no less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

3. The Parties shall encourage the exchange of such information between the charging bodies and the airlines as may be necessary to permit a full and timely assessment of the charges in accordance with paragraphs 1 and 2 of this Article.

4. Increased or new charges should only follow adequate consultations between the charging bodies and the airlines. Reasonable notice of any proposals for changes in user charges should be given to users to enable them to express their views before changes are made.

5. Neither Party shall 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

Fair and equal opportunity

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.

2. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers under Annex I or Annex II 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. Any requirements for the filing of schedules, applications for programs for charter flights, or operational plans by airlines of the other Party shall be on a non-discriminatory basis and imposed only when necessary to fulfill requirements under the domestic law of either Party. If a Party requires filings, 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. Unless required by national laws and regulations, prices charged by airlines of the Parties shall not be required to be filed with the aeronautical authorities of either Party.

Article 13

Competition

1. The Parties recognize that competition among airlines in the U.S.-Australia market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not to benefit individual competitors.
2. The Parties recognize that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results. The Parties agreed that their respective aviation authorities should continue to cooperate on competition matters, taking into account the different responsibilities, competencies and procedures of the authorities.

Article 14

U.S. Government Procured Transportation

Effective October 1, 2008, Australian airlines shall have the right to transport passengers and cargo on scheduled and charter flights for which a U.S. Government civilian department, agency, or instrumentality (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government, or (2) provides the transportation to

or for a foreign country or international or other organization without reimbursement, and that transportation is (a) between any point in the United States and any point in Australia, except - with respect to passengers only - between points for which there is a city-pair contract fare in effect, or (b) between any two points outside the United States. This paragraph shall not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department.

Article 15

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 16

Amendments

This Agreement may be amended in writing by agreement of both Parties. Any amendment to this Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of the amendment.

Article 17

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 18

Registration with ICAO

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

Article 19

Entry into Force

This Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of the Agreement.

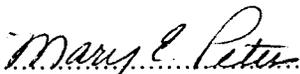
Upon entry into force, this Agreement shall supersede the Air Transport Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia, signed at Washington December 3, 1946, as amended.

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

DONE at Washington, this ~~thirty-first~~ day of March, 2008, in two originals.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF
AUSTRALIA:


.....
Mary E. Peters
Secretary of Transportation


.....
The Hon. Kevin Rudd
Prime Minister

ANNEX I

Scheduled Air Transportation

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:

1. Routes for the airline or airlines designated by the Government of the United States:
 - a. From points behind the United States via the United States and intermediate points to a point or points in Australia and beyond.
 - b. For all-cargo service or services, between Australia and any point or points.
2. Routes for the airline or airlines designated by the Government of Australia:
 - a. From points behind Australia via Australia and intermediate points to a point or points in the United States and beyond.
 - b. For all-cargo service or services, between the United States and any point or points.

Section 2

Operational Flexibility

1. Each designated 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, with the exception of all-cargo services, the transportation is part of a service that serves a point in the territory of the Party which has designated the airline.

2. 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, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party which has designated the airline and, in the inbound direction, the transportation to the territory of the Party which has designated the airline is a continuation of the transportation from beyond such point.

3. Nothing in this Agreement 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.

ANNEX II

Charter Air Transportation

Section 1

A. Airlines of each Party shall have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

1. Between any point or points in its homeland and any point or points in the territory of the other Party; and
2. Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

B. In the performance of services covered by this Annex, an airline of either Party 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 behind, intermediate, and beyond points and points in the territories of the Parties 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;

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;
7. make stopovers at any points whether within or outside the territory of either Party;
8. carry transit traffic through the other Party's territory; and
9. 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, with the exception of cargo charters, the transportation is part of a service that serves a point in the homeland of the airline.

C. On any segment or segments of the routes above, any airline of a Party may perform charter international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that, with the exception of cargo charters, 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.

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

Section 2

Nothing contained in this Agreement 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.

Section 3

Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party, when operating charter international air transportation, 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.



NOTE NO. 149/2013

The Embassy of Australia in Washington presents its compliments to the United States Department of State and has the honour to refer to the *Air Transport Agreement between the Government of Australia and the Government of the United States of America*, done at Washington on 31 March 2008 ('the Air Transport Agreement').

The Embassy has the honour to propose the following amendments to the text of the Air Transport Agreement:

- the following Settlement of Disputes Article be inserted in the Air Transport Agreement as Article 16:

“Article 16

Settlement of Disputes

1. Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing), or that concern the application of relevant domestic competition law, that is not resolved by a first round of formal consultations under Article 15, may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree,

either Party may give written notice to the other Party through diplomatic channels that it is requesting that the dispute be submitted to arbitration.

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. The arbitral tribunal shall be entitled to decide the extent of its jurisdiction in accordance with this Agreement and, except as otherwise agreed, shall establish its own procedural rules. The tribunal, once formed, may at the request of either Party, recommend interim relief measures pending its final decision. If either Party requests it, or the tribunal deems it appropriate, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.

4. Except as otherwise agreed or as directed by the tribunal, the statement of claim shall be submitted within 45 days of the time the tribunal is fully constituted and the statement of defense shall be submitted 60 days thereafter. Any reply by the claimant shall be submitted within 30 days of the statement of defense. Any reply by the respondent shall be submitted within 30 days thereafter. If either Party requests it or the tribunal deems it appropriate, the tribunal shall hold a hearing within 45 days after the last pleading is 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, 30 days after the last pleading is submitted. The decision of the majority of the tribunal shall prevail.
6. The Parties may submit requests for interpretation of the decision within 15 days after it is rendered and any interpretation given shall be issued within 15 days of such request.
7. If the tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach agreement with the other Party on a mutually satisfactory resolution within 40 days after notification of the tribunal's decision, the other Party may suspend the application of comparable benefits arising under this Agreement until such time as the Parties have reached agreement on a resolution of the dispute. Nothing in this paragraph shall be construed as limiting the right of either Party to take countermeasures in accordance with international law.
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 2b of this Article shall be considered to be part of the expenses of the arbitral tribunal.”

- And that Articles 16-19 of the Air Transport Agreement be renumbered 17-20 respectively

If the foregoing proposal is acceptable to the Government of the United States of America, the Australian Embassy has the honour to propose that this Note and the Department of State's confirmatory Note in reply shall constitute an Agreement between the two Governments amending the Air Transport Agreement, which, notwithstanding Article 16 of the Air Transport Agreement, shall enter into force upon the date of entry into force of the Air Transport Agreement.

The Australian Embassy avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.



WASHINGTON
30 May 2013

The Department of State acknowledges receipt of Note No. 149/2013, dated May 30, 2013, from the Embassy of Australia, which proposes amendments to the text of the Air Transport Agreement between the Government of the United States of America and the Government of Australia, signed at Washington on March 31, 2008 (the “Agreement”) and reads as follows:

The Embassy of Australia in Washington presents its compliments to the United States Department of State and has the honour to refer to the *Air Transport Agreement between the Government of Australia and the Government of the United States of America*, done at Washington on 31 March 2008 (‘the Air Transport Agreement’).

The Embassy has the honour to propose the following amendments to the text of the Air Transport Agreement:

- the following Settlement of Disputes Article be inserted in the Air Transport Agreement as Article 16:

“Article 16

Settlement of Disputes

1. Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing), or that concern the application of relevant domestic competition law, that is not resolved by a first round of formal consultations under Article 15, may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, either Party may give written notice to the other Party through diplomatic channels that it is requesting that the dispute be submitted to arbitration.

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. The arbitral tribunal shall be entitled to decide the extent of its jurisdiction in accordance with this Agreement and, except as otherwise agreed, shall establish its own procedural rules. The tribunal, once formed, may at the request of either Party, recommend interim relief measures pending its final decision. If either Party requests it, or the tribunal deems it appropriate, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. Except as otherwise agreed or as directed by the tribunal, the statement of claim shall be submitted within 45 days of the time the tribunal is fully constituted and the statement of defense shall be submitted 60 days thereafter. Any reply by the claimant shall be submitted within 30 days of the statement of defense. Any reply by the respondent shall be submitted within 30 days thereafter. If either Party requests it or the tribunal deems it appropriate, the tribunal shall hold a hearing within 45 days after the last pleading is 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, 30 days after

the last pleading is submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for interpretation of the decision within 15 days after it is rendered and any interpretation given shall be issued within 15 days of such request.
 7. If the tribunal determines that there has been a violation of this Agreement and the responsible Party does not cure the violation, or does not reach agreement with the other Party on a mutually satisfactory resolution within 40 days after notification of the tribunal's decision, the other Party may suspend the application of comparable benefits arising under this Agreement until such time as the Parties have reached agreement on a resolution of the dispute. Nothing in this paragraph shall be construed as limiting the right of either Party to take countermeasures in accordance with international law.
 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 2b of this Article shall be considered to be part of the expenses of the arbitral tribunal.”
- And that Articles 16-19 of the Air Transport Agreement be renumbered 17-20 respectively.

If the foregoing proposal is acceptable to the Government of the United States of America, the Australian Embassy has the honour to propose that this Note and the Department of State's confirmatory Note in reply shall constitute an Agreement between the two Governments amending the Air Transport Agreement, which, notwithstanding Article 16 of the Air Transport Agreement, shall enter into force upon the date of entry into force of the Air Transport Agreement.

The Australian Embassy avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

The Department of State confirms that the proposal contained in the Embassy's note is acceptable to the Government of the United States of America. Therefore, the Embassy's note and this reply shall constitute an Agreement amending the Air Transport Agreement, which shall enter into force upon the date of entry into force of the Air Transport Agreement.



Department of State,

Washington, June 18, 2013.