

# PROTOCOL OF AMENDMENT TO THE AIR TRANSPORT SERVICES AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF ARGENTINA AND THE UNITED STATES OF AMERICA

PROTOCOL OF AMENDMENT TO THE AIR TRANSPORT SERVICES

AGREEMENT BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF  
ARGENTINA

AND THE UNITED STATES OF AMERICA

The Government of the Argentine Republic and the Government of the United States of America (hereinafter the "Parties");

Have agreed to amend the Air Transport Services Agreement between the Governments of the Republic of Argentina and the United States of America, done at Buenos Aires October 22, 1985, as amended (hereinafter the "Agreement") as follows:

## **Article I**

A new Article 1 shall be added to the Agreement 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 Argentina, the Ministry of Transportation, and any person or agency authorized to perform functions exercised by the said Ministry of Transportation;
- (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) "Convention" means the Convention on International Civil Aviation, done at Chicago on December 7, 1944, and includes:

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

(b) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;

(5) "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;

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

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

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

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

(10) "Territory" in relation to a Party has the meaning assigned to it in Article 2 of the Convention; and

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

## **Article II**

Article II of the Agreement shall be renumbered as Article 2.

## **Article III**

1. Article I of the Agreement shall be renumbered as Article 3 and renamed as follows:

Article 3. Designation and Authorization

2. Paragraph (1) of Article 3 shall be deleted in its entirety and replaced with the following:

(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 Annex I or in Annex II or both.

3. Subparagraph (c) of paragraph (2) of Article 3 shall be amended to replace “Article IV” with “Article 6 (Safety)” and “Article IVbis” with “Article 7 (Aviation Security)”.
4. Paragraph (3) of Article 3 shall be deleted in its entirety.

#### **Article IV**

A new Article 4 shall be added to the Agreement as follows:

##### 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 designated by the other Party where:

(a) substantial ownership and effective control of that 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; or

(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 1b or 1c of this Article, the rights established by this Article shall be exercised only after consultation with the other Party.

(3) This Article does not limit the rights of either Party to withhold, revoke, suspend, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in accordance with the provisions of Article 6 (Safety) or Article 7 (Aviation Security).

#### **Article V**

1. Article III of the Agreement shall be renumbered as Article 5 and renamed as follows:

##### Article 5. Application of Laws

2. Paragraph (1) of Article 5 shall be deleted in its entirety and replaced with the following:

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

### **Article VI**

1. Article IV of the Agreement shall be renumbered as Article 6 and renamed as follows:

Article 6. Safety

2. Paragraph (1) of Article 6 shall be amended to delete “on International Civil Aviation, opened for signature at Chicago on December 7, 1944 (the Convention)”.
3. Paragraph (2) of Article 6 shall be deleted in its entirety and replaced with the following:

(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, suspend, limit, or impose conditions on 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 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.

### **Article VII**

Article IV*bis* of the Agreement shall be renumbered as Article 7.

### **Article VIII**

1. Article VI of the Agreement shall be renumbered as Article 8 and renamed as follows:

Article 8. Commercial Opportunities

2. Paragraph (3) of Article 8 shall be deleted in its entirety and replaced with the following:

(3) Each designated airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at the airline's option, select among competing agents for such services in whole or in part. The rights shall be subject only to

physical constraints resulting from considerations of 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.

3. Paragraph (4) of Article 8 shall be deleted in its entirety and replaced with the following:

(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 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.

4. Paragraph (5) of Article 8 shall be deleted in its entirety and replaced with the following:

(5) 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.

5. Paragraph (6) of Article 8 shall be amended by deleting the first sentence and replacing it with the following:

(6) 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.

6. Paragraph (7) of Article 8 shall be deleted in its entirety and replaced with the following:

(7) In operating or holding out the authorized services on the agreed routes, 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;
- b. an airline or airlines of a third country; and
- c. a surface transportation provider of any country;

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

## **Article IX**

Article V of the Agreement shall be renumbered as Article 9 and renamed as follows:

Article 9. Customs Duties and Charges

### **Article X**

Article VII of the Agreement shall be deleted in its entirety and replaced with a new Article 10, as follows:

Article 10. User Charges

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

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

(3) Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

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

### **Article XI**

Article VIII of the Agreement shall be deleted in its entirety and replaced with a new Article 11, as follows:

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 governed by this Agreement.

(2) Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(3) Neither Party shall impose on the other Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

(4) Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in 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 XII**

Article VIII*bis* of the Agreement shall be renumbered as Article 12.

## **Article XIII**

Article IX of the Agreement shall be renumbered as Article 13, and shall be amended to delete:

“Each Party shall prepare and present during such consultation relevant evidence in support of its position in order to facilitate informed, rational and economic decisions. If there are any revisions of this Agreement and/or its Annexes, which form a part of the present Agreement, as a result of such consultations, they shall be confirmed by an exchange of diplomatic notes.”

## **Article XIV**

Article X of the Agreement shall be renumbered as Article 14.

## **Article XV**

Article XI of the Agreement shall be renumbered as Article 15.

## **Article XVI**

Article XII of the Agreement shall be renumbered as Article 16.

## **Article XVII**

ANNEX I of the Agreement shall be deleted in its entirety and replaced with the following:

### **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:

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

##### **Section 2**

###### **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 behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
4. omit stops at any point or points;
5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services, the service serves a point in the territory of the Party designating the airline.

### Section 3

#### Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air 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 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 from beyond such point.

### Article XVIII

ANNEX III shall be added to the Agreement after ANNEX II, as follows:

### ANNEX III

#### **Transitional Provision: Ground Handling**

Notwithstanding any other provision of this Agreement, the provisions of Article 8, paragraph 3, granting rights with respect to ground-handling, shall not apply to U.S. airlines until January 1, 2020, or on such earlier date selected by the Government of the Argentine Republic, and notified by way of diplomatic note to the Government of the United States of America. This Annex shall in any case expire on January 1, 2020.

### Article XIX

This Protocol of Amendment to the Air Transport Services Agreement between the Governments of the Republic of Argentina and the United States of America 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.

FOR THE GOVERNMENT OF  
THE ARGENTINE REPUBLIC:  
AMERICA:

FOR THE GOVERNMENT OF  
THE UNITED STATES OF

Guillermo Javier Dietrich  
Minister of Transport

Elaine L. Chao  
Secretary of Transportation

### **MEMORANDUM OF CONSULTATIONS**

1. Delegations representing the Government of the United States of America and the Government of the Argentine Republic met in Washington, D.C., Buenos Aires, and by phone and digital video conference on multiple occasions since March 2018, and reached agreement, *ad referendum*, on the text of a Protocol of Amendment (the “Protocol”) to the 1985 Air Transport Services Agreement Between the Governments of the United States of America and the Republic of Argentina, as amended (the “Air Transport Agreement”). The Protocol modernizes the air transport relationship between the United States and Argentina.
2. Discussions were held in a friendly and constructive atmosphere and the delegations initialled the text of the Protocol in Buenos Aires, on June 5, 2019.
3. The Argentine delegation noted that while Argentina has made significant progress in liberalizing its aviation sector over the past few years, additional work to this end remains to be done and requires time to fully implement. The U.S. delegation noted these developments and expressed its view that Argentina has indeed made significant progress and that implementation of this Protocol should further support the expansion and modernization of air transport within Argentina, and between Argentina and the United States.
4. In response to a question from the Argentine delegation regarding what would become Article 3 (Designation and Authorization) of the Air Transport Agreement, as amended by the Protocol, the U.S. delegation explained that the U.S. Department of Transportation licenses airlines to serve the United States consistent with the authorization provisions of the applicable air transport agreement and U.S. laws and regulations. The U.S. delegation further stated that, with respect to Article 3, the U.S. Department of Transportation has broad authority to waive ownership and control standards, and that the U.S. Department of Transportation has established a practice of waiving such standards for airlines when all countries involved are parties to modern, liberal air transport agreements with the United States.
5. With respect to what would become paragraph 4 of Article 11 of the Air Transport Agreement, as amended by the Protocol, the delegations affirmed their understanding that neither Party requires approval of schedules for purposes of controlling capacity in the

market. The Argentine delegation noted, however, that Argentina requires the filing of schedules according to its law and regulations, and in a manner consistent with Article 11, in an effort to ensure uniform conditions.

6. The Protocol includes a transitional Annex containing provisions relating to ground handling at Argentine airports. The Argentine delegation remarked that the Government of the Argentine Republic had recently issued an executive order which authorized the creation of a new legal framework to allow for competition in the ground-handling market at Argentine airports. Accordingly, the transitional Annex provides all designated airlines of the United States the right to perform their own ground handling in Argentina or to select among competing agents for such services, effective January 1, 2020, or by an earlier date as communicated by the Government of the Argentine Republic via diplomatic note.
7. The U.S. delegation asked for clarification concerning the status of Argentina's charter regulations as they relate to the provisions of Annex II of the Air Transport Agreement. The Argentine delegation noted that the Air Transport Agreement has the status of a treaty under Argentine law and therefore takes precedence over Argentine regulations, including those governing charters. The Argentine delegation explained that Argentina would consider applications for charter operations in a manner consistent with Annex II of the Air Transport Agreement. Accordingly, airlines in the U.S.-Argentina air transport market would not have to comply with any Argentine charter requirements inconsistent with the terms of the Air Transport Agreement. The delegations further affirmed their respective governments' understanding that U.S. and Argentine charter airlines in or seeking to enter the U.S.-Argentine air transport market would continue to benefit from open entry and fair competition in the marketplace.
8. The delegations confirmed their intention to develop mutually acceptable provisions on dispute resolution and on the application of customs duties and charges in relation to promotional materials used by airlines to be recommended to their respective authorities for approval, with the goal of further amending the Air Transport Agreement and bringing them into force as soon as possible