

**PACIFIC ISLANDS
AIR SERVICES AGREEMENT
(PIASA)**

PREAMBLE

The Parties to this Agreement:

MINDFUL of the close historical, cultural, political, economic and geographic links that bind the States of the Pacific Islands Forum;

MINDFUL of the close ties that bind all Pacific Islands Forum members, and their desire to eventually provide a framework for the conduct of air services among them;

RECALLING the outcomes of the meetings of the Pacific Islands Forum Leaders, Forum Aviation Ministers and Forum Trade Ministers;

NOTING that the Pacific Agreement on Closer Economic Relations has entered into force;

RECOGNISING the strategic role of international air transport in the sustainable development of island economies, and especially through the promotion of trade, commerce and tourism;

CONSCIOUS of the need to improve the level, quality and efficiency of air transport services within and beyond the island States of the Pacific Islands Forum;

BEARING in mind the increasing globalisation of the world economy;

DESIRING progressively to liberalise their aviation environment and adapt it to internal and external commercial and regulatory realities; and

TAKING into account the differing economic potentials, resources and special development problems of Small Island States and Least Developed Countries;

HAVE AGREED as follows:

ARTICLE 1 – Definitions

For the purposes of this Agreement, unless otherwise stated:

- (a) “aeronautical authorities” means the Minister responsible for Civil Aviation or any other authority or person empowered to perform the functions exercised by the said Minister, or the aeronautical authorities which may be specified by a Party in its instrument of accession;
- (b) “Agreement” means this Agreement, its Annexes, and any amendments thereto;
- (c) “air transport” means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

- (d) “airline”, “air service” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Convention;
- (e) “Convention” means the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944, and includes:
- (i) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by all the Parties; and
 - (ii) 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 all the Parties;
- (f) “Forum Island Countries” means the Cook Islands, Federated States of Micronesia, Fiji Islands, Kiribati, Republic of the Marshall Islands, Nauru, Niue, Republic of Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu;
- (g) “Pacific Islands Forum members” means Forum Island Countries, Australia and New Zealand;
- (h) “designated airline” means an airline or airlines designated and authorised in accordance with Article 6 of this Agreement;
- (i) “international air transport” means air transport that passes through the airspace over the territory of more than one State;
- (j) “Party” means any State which has signed and ratified, or acceded to, the Agreement once it has entered into force;
- (k) “price” means any fare, rate or charge for the carriage of passengers (and their baggage) and cargo (excluding mail) in air transport charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- (l) “registry” means the national record of aircraft licensed to operate by the aeronautical authorities of that State;
- (m) “scheduled service” means a series of flights performed by aircraft for the transport of passengers, cargo and mail between two or more points, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public;
- (n) “Secretary General” means the Secretary General of the Pacific Islands Forum Secretariat;
- (o) “State” means any State, its overseas territory or other administrative region;
- (p) “territory” has the meaning assigned to it in Article 2 of the Convention, provided that, upon signature or accession, a State may specify the definition of its “territory” for the purposes of this Agreement; and

- (q) “wet lease” means the lease of an aircraft with crew.

ARTICLE 2 – Objectives

The objectives of this Agreement are:

1. to establish a framework for the gradual integration of aviation services of the members of the Pacific Islands Forum in a way that is fully supportive of sustainable development of the Forum Island Countries;
2. to enhance the flexibility of international air service within the region governed by the Parties;
3. to improve the competitiveness and efficiency of airlines operating within the region governed by the Parties;
4. to encourage the development of air services throughout the region governed by the Parties in order to promote multiple destination tourism;
5. to facilitate means by which Small Island States and Least Developed Countries can be better serviced by international air transport; and
6. to establish arrangements that are intended to provide “stepping stones” to allow the Forum Island Countries gradually to become part of a single regional aviation market among all members of the Pacific Islands Forum.

ARTICLE 3 – Arrangements among Forum Island Countries

1. The Parties agree that it is desirable for the Forum Island Countries to commence a single aviation market among themselves first.
2. The Forum Island Countries may liberalise air services among themselves and integrate their air services at a different pace and with different priorities than those with which they liberalise and integrate their air services with those of Australia and New Zealand.
3. Any arrangements established in accordance with this Article shall:
 - (a) be consistent with the objectives of this Agreement; and
 - (b) confer no rights or obligations on any Party not party to that arrangement.

ARTICLE 4 – Single Aviation Market

1. The Parties shall gradually establish a single aviation market in accordance with this Agreement.

2. The area of the single aviation market shall consist of the territories of the Parties to this Agreement.

3. The Parties may agree to extend the area to include any other State, subject to terms consistent with this Agreement which shall be negotiated between the Parties and the other State.

ARTICLE 5 – Grant of Rights

1. Each Party grants to the other Parties the following rights for the conduct of international air transport by the airlines of the other Parties:

- (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) for the designated airlines of those other Parties, the rights set out in Annex 1 to this Agreement in accordance with the timetable included in that Annex for the taking up of those rights.

2. Each Party shall extend favourable consideration to applications by airlines of another Party to carry traffic not covered by this Agreement on the basis of comity and reciprocity.

3. Nothing in this Agreement shall impair or limit the rights that have been exchanged in air services agreements between Parties to this Agreement or between Parties to this Agreement and other States.

4. Nothing in this agreement shall be deemed to confer on a designated airline of one Party the right to take up, in the territory of another Party, passengers, baggage, cargo or mail carried for remuneration or hire and destined for another point in the territory of that other Party.

ARTICLE 6 – Designation and Authorisation

1. Each Party shall have the right to designate one or more airlines to conduct international air transport in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to concerned Parties, as appropriate, in writing through diplomatic channels.

2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorisations and technical permissions, the aeronautical authorities of the Party receiving a designation shall grant the appropriate authorisations and permissions to that designated airline with minimum procedural delay, provided that:

- (a) from Stage 1 in Annex 1 to this Agreement:

- (i) that airline is substantially owned and effectively controlled by one or more of the Parties to this Agreement and/or their nationals;
 - (ii) where that airline ceases to be substantially owned and effectively controlled by one or more of the Parties to this Agreement and/or their nationals, an airline may be designated provided it is effectively controlled by one or more of the Parties to this Agreement and/or their nationals and has its place of residence and principal place of business in the territory of the designating Party; or
 - (iii) where the Party does not have an airline operating on international routes at the time that this Agreement comes into force, the airline to be designated by the Party has its place of residence and principal place of business in the territory of the designating Party;
- (b) from Stage 3 in Annex 1 to this Agreement, that airline:
- (i) is substantially owned and effectively controlled by one or more of the Parties to this Agreement and/or their nationals; or
 - (ii) has its place of residence and principal place of business in the territory of the designating Party;
- (c) the designated airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally applied to the operation of international air transport by the Party considering the application or applications; and
- (d) the Party designating the airline is maintaining and administering the standards set forth in Articles 16 and 17 of this Agreement.
3. Upon receipt of such authorisations, the designated airline may begin at any time to operate the international air transport authorised, in whole or in part, provided that the airline complies with this Agreement.

ARTICLE 7 – Revocation and Limitation of Authorisation

1. The aeronautical authorities of any Party may revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by any other Party where:
- (a) from Stage 1 in Annex 1 to this Agreement:
 - (i) that airline is neither substantially owned and effectively controlled by one or more of the Parties to this Agreement and/or their nationals;
 - (ii) that airline is operating pursuant to Article 6 (2) (a) (ii) and ceases to be effectively controlled by one or more of the Parties to this Agreement and/or their nationals or ceases to have its place of residence and principal place of business in the territory of the designating Party; nor

- (iii) the designating Party does not have an airline operating on international routes at the time that this Agreement comes into force, that airline does not have its place of residence and principal place of business in the territory of the designating Party; or
 - (b) from Stage 3 in Annex 1 to this Agreement that airline:
 - (i) is neither substantially owned and effectively controlled by one or more of the Parties to this Agreement and/or their nationals; nor
 - (ii) has its place of residence and principal place of business in the territory of the designating Party; or
 - (c) that airline has failed to comply with the laws, regulations or rules referred to in Article 15 of this Agreement; or
 - (d) that airline is designated by a Party which is not maintaining and administering the standards in Article 16 of this Agreement.
2. Unless immediate action is essential to prevent further non-compliance with sub-paragraphs 1(c) and 1(d) of this Article, the rights established by this Article shall be exercised only after consultations with the aeronautical authorities of the Party that designated the airline.
3. This Article does not limit the rights of the aeronautical authorities of any Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline of any other Party in accordance with Article 17 of this Agreement.

ARTICLE 8 – Leasing of Aircraft

1. The designated airlines of the Parties may use leased aircraft, including wet leased aircraft, for conducting international air transport in accordance with this Agreement.
2. Designated airlines shall give prior written notice to the aeronautical authorities of the Party or Parties to whose territory they wish to operate leased aircraft. Such notice shall include the terms of the lease agreement, evidence of passenger and third party insurance and the name of the State responsible for the airworthiness of the leased aircraft.
3. The aeronautical authorities of any Party may withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline of any other Party that is using leased aircraft if the information in paragraph 2 is not provided to its satisfaction or if it is not satisfied that, in respect of that aircraft, the airline is maintaining and administering the standards contained in Article 16 of this Agreement.

ARTICLE 9 – Commercial Arrangements

In operating or holding out international air transport pursuant to this Agreement, the designated airlines may enter into commercial arrangements with any other airlines that have the appropriate operating authorisation including airlines of States that are not Parties to this Agreement. These arrangements may include code-sharing, blocked space arrangements and any other commercial arrangements which are consistent with this Agreement.

ARTICLE 10 – Commercial Opportunities

1. The designated airlines of each Party have the right to establish offices in the territory of any other Party for the promotion and sale of international air transport.
2. The designated airlines of each Party shall be entitled, in accordance with the laws and regulations of another Party relating to entry, residence, and employment, to bring in and maintain in the territory of that other Party managerial, sales, technical, operational, and other specialist staff required for the provision of international air transport.
3. Each designated airline has the right to perform its own ground-handling in the territory of any other Party (“self-handling”) or, at its own 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 or competing services are not available, ground services shall be provided on a non-discriminatory basis to all airlines and charges shall be based on the cost of services provided.
4. Any airline of each Party may engage in the sale of international air transport in the territory of another Party directly and, at the airline’s discretion, through its agents. Each airline shall have the right to sell such transport, and any person shall be free to purchase such transport, in the currency of that territory or in freely convertible currencies.
5. Each airline shall have the right to 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 and remittance on the date the airline 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 another Party in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of another Party in freely convertible currencies according to local currency regulation.

ARTICLE 11 – Customs Duties and Other Charges

1. On arriving in the territory of one Party, aircraft operated in international air transport by the designated airlines of another 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 transport 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 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, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the services, 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 another Party engaged in international air transport, 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 another Party used in international air transport;

(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 another Party engaged in international air transport, 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 another Party engaged in international air transport, 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.

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 be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from another Party, for the loan or transfer in the territory of that other Party of the items specified in paragraphs 1 and 2 of this Article.

ARTICLE 12 – 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 Parties 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 Parties 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 Parties 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 in 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. No Party shall be held, in dispute settlement procedures pursuant to Article 19, to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by another Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge of practice that is inconsistent with this Article.

ARTICLE 13 – Fair Competition

1. Each Party shall allow a fair and equal opportunity for the designated airlines of the Parties to compete in providing the international air transport governed by this Agreement.
2. The aeronautical authorities of each Party shall allow each designated airline to determine the frequency and capacity of the international air transport it offers based upon commercial considerations in the marketplace. Consistent with this right, aeronautical authorities shall not unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of another Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.
3. A Party shall not impose on another 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. An aeronautical authority shall not require the filing of schedules or operational plans by the designated airlines of another 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. If the aeronautical authorities of any Party require filings for information purposes, they shall minimise the administrative burden of filing requirements and procedures on air transport intermediaries and on the designated airlines of another Party.

5. In the event that the aeronautical authorities of a Party believe that an operation or operations intended or conducted by a designated airline of another Party may constitute unfair competitive conduct, in accordance with the indicators specified in Annex 2 to this Agreement, they may request consultations pursuant to Article 18 of this Agreement. Any such request shall be accompanied by notice of the reasons for the request for consultations.

ARTICLE 14 – Pricing

1. The designated airlines of the Parties may establish prices based on commercial considerations in the marketplace.

2. Aeronautical authorities of the Parties may require the filing of prices for information purposes, with minimal administrative burden and procedures on air transport intermediaries and on designated airlines of another Party.

3. The aeronautical authorities of a Party may request consultations with the aeronautical authorities of another Party pursuant to Article 18 of this Agreement if they believe that a price or prices charged or intended to be charged by a designated airline of that other Party may:

(a) constitute unfair competitive conduct, in accordance with the indicators specified in Annex 2 to this Agreement;

(b) constitute unreasonable discriminatory tariffs or practices;

(c) harm consumers as being unreasonably high or unreasonably restrictive, due either to their abuse of a dominant position or to concerted practices among air carriers; or

(d) harm airlines through tariffs that are artificially low because of direct or indirect government subsidy or support.

4. Any such request shall be accompanied by notice of the reasons for the request for consultations.

ARTICLE 15 – Applicability of Laws, Regulations and Rules

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the airlines of any other 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 another Party's airlines.
3. A Party shall not give preference to its own or any other airline over a designated airline of any other Party engaged in similar international air transport in the application of its customs, immigration, quarantine and similar regulations.
4. Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances. Baggage and cargo in direct transit shall be exempt from customs duties and similar taxes.

ARTICLE 16 – Safety

1. Each Party shall recognise as valid, for the purpose of operating international air transport governed by this Agreement, certificates of airworthiness, certificates of competency, and licences issued or validated by another Party and still in force, provided that the requirements for such certificates or licences meet the minimum standards established pursuant to the Convention. Each Party may, however, refuse to recognise as valid for the purpose of flight above its own territory, certificates of competency and licences granted or validated for its own nationals by another Party.
2. Any Party may request consultations concerning the safety standards maintained by another Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines. Other Parties may participate in the consultations in accordance with Article 18 (2) and (3).
3. If, following such consultations, any Party participating in the consultations finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that meet the minimum standards established pursuant to the Convention, that other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and that other Party shall take appropriate corrective action.
4. Each Party shall have the right to withhold, revoke or limit the operating authorisation or technical permission of an airline or airlines designated by another Party where that Party does not take the appropriate corrective action within a

reasonable time or where urgent action is necessary to ensure the safety of an airline operation.

ARTICLE 17 – Aviation Security

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed in Tokyo on 14 September 1963, the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970, the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971, the *Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, signed at Montreal on 24 February 1988, and any other multilateral agreement governing civil aviation security binding upon the Parties.

2. The Parties shall provide, on request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry, operators of aircraft who have their permanent residence or principal place of business in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

4. Each Party agrees that operators of aircraft specified in paragraph 3 of this Article may be required to observe the aviation security provisions referred to in that paragraph, required by another Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from another Party for reasonable special security measures to meet a particular threat to civil aviation.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Party shall take such measures as it may find practicable to ensure that an aircraft of any other Party, subjected to an act of unlawful seizure or other acts of unlawful interference, which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

7. When a Party has reasonable grounds to believe that another 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 authorisations 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.

8. Where a Party takes action to withhold, revoke, suspend, limit, or impose conditions on the operating authorisations and technical permissions of an airline or airlines of another Party, pursuant to Article 17 (7), the Party taking action shall immediately notify the Secretary General, who shall notify all Parties to the Agreement of that action.

ARTICLE 18 – Consultations

1. In the spirit of close co-operation, the aeronautical authorities of the Parties shall consult with each other from time to time on matters connected with this Agreement.

2. The aeronautical authorities of a Party may request consultations with the aeronautical authorities of any other Party on any matter relating to the interpretation or application of this Agreement. Such consultations are to be held within 30 days of receipt of a written request. Unless otherwise agreed, such consultations should begin at the earliest possible date, but not later than 30 days from the date of receipt of a written request. In the event consultations are not held within 30 days of receipt of a written request and the aeronautical authorities of the Party initiating the request for consultation believe their designated airline(s) are being damaged by predatory or anti-competitive conduct, the operating permit of the airline causing such damage may be suspended, following 14 days notice of action, pending the outcome of consultations.

3. Where any Party requests consultations with any other Party in relation to issues of safety or aviation security, under Articles 16 (2) and 17 (7) of this Agreement, such Party shall give notice of its request to the Secretary General, who shall notify all Parties to the Agreement of the request. Any other Party to the Agreement that considers it has a substantial interest in the subject matter of the consultations shall be entitled to participate in the consultations and shall, within 30 days of receiving notification by the Secretary General, deliver notice of its interest in such participation in writing to the Secretary General, who shall notify the other Parties to the Agreement of such interest as soon as possible.

4. Any Party may request consultations to be held among all Parties to the Agreement in relation to matters connected with the Agreement which it considers to be significant to all Parties, provided any such request is supported by at least two other Parties. A request for such consultations shall be forwarded to the Secretary General, who shall ensure that all Parties promptly receive a copy of any such request. Such consultations shall take place within 45 days of receipt by the Secretary General of the original request for consultations.

ARTICLE 19 – Settlement of Disputes

1. In the event that consultations between aeronautical authorities pursuant to Article 18 of this Agreement fail to resolve a dispute arising under this Agreement, the dispute may be referred by agreement of the Parties to the dispute for settlement by a mediator or dispute settlement panel appointed from a list of suitably qualified aviation experts maintained by the International Civil Aviation Organization for dispute settlement purposes.

2. The settlement of disputes by a mediator or dispute settlement panel shall be in accordance with the guidelines specified in Annex 3.

ARTICLE 20 – Withdrawal

1. Any Party may at any time give notice in writing to the Secretary General of its intention to withdraw from this Agreement.

2. Such withdrawal shall take effect twelve months from the date of receipt of the notice by the Secretary General unless such notice is earlier withdrawn.

ARTICLE 21 – Amendment

1. This Agreement may be amended with the consent and ratification of all Parties.

2. For the purpose of amending this Agreement, any Party may, with the support of at least two other Parties, request consultations pursuant to Article 18 (4) of this Agreement. Any such request shall be accompanied by notice in writing of the amendment sought.

ARTICLE 22 – Review

1. After two years, but not more than three years, or at the request of three or more Parties, from the date on which Stage 3 of the movement to a Single Aviation Market is completed, as specified in Annex 1, representatives of all the Parties to the

Agreement shall meet in order to review the working of the Agreement and to determine whether any amendments are required.

2. Following consultation with the Parties, the Secretary General shall call the meeting to review the Agreement with 45 days' notice to the Parties.

ARTICLE 23 – Depositary

1. The original of this Agreement and its amendments shall be deposited with the Secretary General, who shall be the Depositary.

2. The Depositary shall transmit certified copies of the Agreement and its amendments, and instruments of ratification and accession to all Parties to the Agreement and to any States that may subsequently accede to the Agreement.

3. The Agreement and its amendments shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

4. The Agreement, its amendments and any notice of withdrawal shall be registered by the Depositary pursuant to Article 83 of the Convention.

ARTICLE 24 – Signature and Ratification

1. This Agreement shall be open for signature by the Governments of the Forum Island Countries.

2. The Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Depositary.

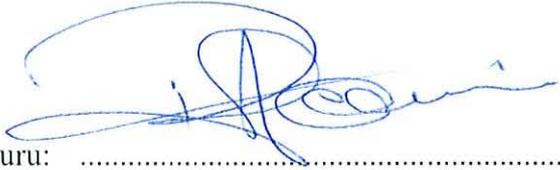
ARTICLE 25 – Accession

1. This Agreement shall be open to accession by Australia and New Zealand at the commencement of Stage 3 of the movement to a single aviation market, as specified in Annex One.

2. This Agreement shall be open to accession by any other State subject to the consent of all Forum Island Countries that are Parties, in accordance with Article 4 (3).

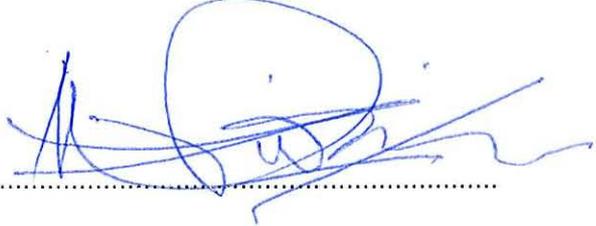
ARTICLE 26 – Entry into Force

1. This Agreement shall enter into force on the thirtieth day from the date of deposit of the sixth instrument of ratification with the Depositary, and thereafter for each Party thirty days after the deposit of its instrument of ratification or accession.



For the Government of Republic of Nauru:

this 16th day of August 2003



For the Government of Niue:

this 16th day of March 2007

For the Government of the Republic of Palau:

this day of



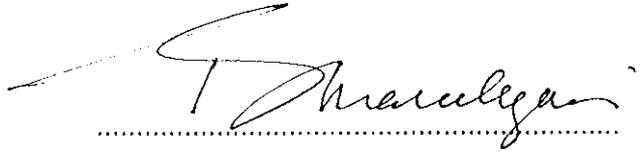
For the Government of the Independent State of Papua New Guinea:

this 10th day of December 2004

For the Government of the Republic of the Marshall Islands:

this day of

For the Government of Samoa:


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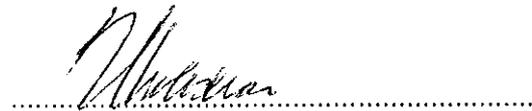
this ^{7th} day of August 2004

For the Government of Solomon Islands:


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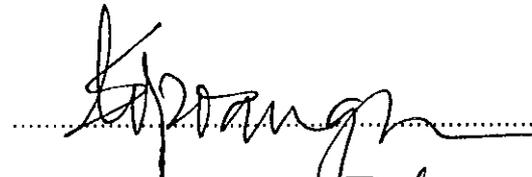
this 12 day of MAY 2005

For the Government of Tonga:


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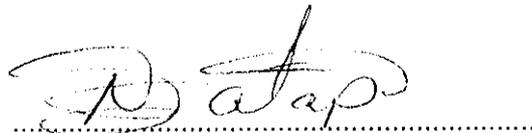
this 16 day of August 2005

For the Government of Tuvalu:


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this 15th day of July, 2005

For the Government of Vanuatu:


.....

this 16 day of August 2003

ANNEX 1: Phased movement to a Single Aviation Market pursuant to Article 5 (1) (c)

Stage 1 - Initial phase

Commences six months after the Agreement comes into force

1. The designated airlines of one Party may operate scheduled services to and from the territory of another Party (3rd and 4th freedom), and between the territories of Parties via the territory of their own Party (6th freedom).
2. Where a Party already has the rights for its designated airline(s) to operate scheduled services to and from the territory of another Party (1) via the territory of a third Party and/or (2) beyond the territory of the other Party to the territory of a third Party or of another State, with the right to pick up and put down local traffic travelling between the territory of the other Party and that of the third Party or other State, the designated airlines of the first Party may continue to exercise those rights (5th freedom).
3. 5th freedom rights may also be exercised for scheduled services between the territory of Parties to this Agreement (1) by the designated airline of a Party that does not have an airline operating on international routes at the time that this Agreement comes into force; and (2) for scheduled dedicated cargo services operated by the designated airlines of any Party to this Agreement.
4. The designated airlines of any Party may exercise such 5th freedom rights, where they do not already exist, for the carriage of passengers whose journey originates in the territory of a State that is not a Party to this Agreement.
5. Designated airlines operating to the territory of more than one other Party on the same scheduled service are entitled to pick up and put down their own passengers travelling between the territories of the other Parties (own stopover traffic).

Stage 2 - Internal Single Aviation Market

Commences 12 months after this Agreement comes into force

1. The designated airlines of any Party to this Agreement are entitled to operate scheduled 3rd, 4th, 5th and 6th freedom services between the territories of all Parties to this Agreement.
2. Where a Party already has rights for its designated airlines to operate scheduled 5th freedom services between the territory of another Party to this Agreement and the territory of a State that is not a Party to this Agreement, those rights may continue to be exercised.
3. The designated airlines of all Parties to this Agreement may operate scheduled 5th freedom services between the territory of another Party to this Agreement and, to the extent that bilateral arrangements allow, the territory of a State that is not a Party

to this Agreement for the carriage of passengers whose journey originates in any State that is not a Party to this Agreement.

Stage 3 - Full Single Aviation Market

Commences 30 months after this Agreement comes into force

The designated airlines of all Parties to this Agreement may operate:

- (a) scheduled 3rd, 4th, 5th and 6th freedom services between all Parties to this Agreement; and
- (b) to the extent that bilateral arrangements with States that are not a Party to this Agreement allow, scheduled beyond (5th freedom) services to and from those States.

ANNEX 2: Indicators of possible Unfair Competitive Conduct pursuant to Articles 13(5) and 14(3)

Some or all of the following may be used as indicators of possible unfair competitive conduct meriting closer examination pursuant to Article 13(5) and Article 14(3):

1. Charging fares and rates on routes at levels that are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;
2. The addition of excessive capacity or frequency of service;
3. The practices in question are sustained rather than temporary;
4. The practices in question have a serious economic effect on, or cause significant economic damage to, another airline;
5. The practices in question reflect an apparent intent, or have the probable effect, of crippling, excluding or driving another airline from the market; and conduct indicating an abuse of dominant position on a route.

ANNEX 3: Guidelines when using a Dispute Settlement Mechanism pursuant to Article 19 (2)

The following guidelines may be used, pursuant to Article 19 (2), whenever a mediator or dispute settlement panel is required. The objective of using a mediator or panel is to determine the facts of an alleged unfair competitive action of the type foreseen in Articles 13 and 14 and, if required, to recommend any remedy that may be appropriate.

They are guidelines only and the Parties to the dispute will agree in advance on the specific terms of reference, procedures, guiding principles or criteria and terms of access to the mediator or panel, bearing in mind the objective and the need for a simple, responsive and expeditious process.

The Parties to the dispute will also agree on the selection of an expert or experts drawn from a list of suitably qualified experts maintained by the International Civil Aviation Organization for mediating disputes concerning unfair competitive practices.

- (a) An individual may be used as a mediator to establish the facts of a dispute and mediate a settlement between the Parties;
- (b) An individual expert may be used for fact finding only or may be requested, in addition to fact finding, to recommend a remedy or resolution of the dispute;
- (c) A panel involving two or more experts may be used to establish the facts and recommend a remedy or resolution to the dispute;
- (d) Once the use of this mechanism is agreed, the selection of the expert or experts (and empanelment, if so requested) should be completed within 15 days;
- (e) Any mediator or expert used for this mechanism should be adequately qualified in the general subject matter of the dispute;
- (f) If the Parties to the dispute cannot agree on the choice of a mediator or expert, the Secretary General should be consulted with a view to resolving the choice;
- (g) A mediation should be completed within 60 days of engagement of the mediator;
- (h) Any determination and, if applicable, any recommendations should be rendered within 60 days of engagement of the expert or experts;
- (i) If the Parties to the dispute agree in advance to be bound by a determination, they should use their best efforts to implement the determination;
- (j) If the Parties to the dispute agree in advance to request only a determination of the facts, they should undertake to use those facts for resolution of the dispute; and
- (k) The costs of using the mechanism should be estimated on initiation and apportioned equally, but with the possibility of a binding re-apportionment by the mediator or expert.

ANNEX 4: The Freedoms of the Air

First freedom

The grant by country A to country B, for country B's airlines to fly over country A's territory without landing.

Second freedom

The grant by country A to country B, for country B's airlines to land in A's territory for non-traffic purposes (eg refuelling, aircraft maintenance).

Third freedom

The grant by country A to country B, for country B's airlines to carry traffic from B to A.

Fourth freedom

The grant by country A to country B, for country B's airlines to carry traffic from A to B.

Fifth freedom

The grant by country A to country B, for country B's airlines to carry traffic between country A and any other country, provided that the flight is part of a service that originate or terminates in country B's territory.

Sixth freedom

The grant by country A to country B, for country B's airlines to carry traffic between A and any other country via a point in B's territory.