



ASSOCIATION OF CARIBBEAN STATES  
ASOCIACION DE ESTADOS DEL CARIBE  
ASSOCIATION DES ETATS DE LA CARAIBE

## **ANNEX II**

### **ASSOCIATION OF CARIBBEAN STATES (ACS)**

#### **19<sup>TH</sup> MEETING OF THE SPECIAL COMMITTEE ON TRANSPORT** Paramaribo, Suriname, 23<sup>rd</sup> and 24<sup>th</sup> April, 2010

#### **AIR TRANSPORT AGREEMENT AMONG THE MEMBER STATES AND ASSOCIATE MEMBERS OF THE ASSOCIATION OF CARIBBEAN STATES**

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OF CARIBBEAN STATES**

**PREAMBLE**

The States, Countries and Territories referred to in Article IV of the Convention Establishing the **Association of Caribbean States (ACS)**, done at Cartagena de Indias, Republic of Colombia on July 24, 1994, considering the Plans of Action adopted by the Heads of State and/or Government of the States, Countries and Territories of the Association of Caribbean States at the 2<sup>nd</sup> Summit in Santo Domingo, Dominican Republic;

**Bearing in mind** the decision to promote the Programme adopted by the ACS and entitled "Uniting the Caribbean by Air and Sea";

**Expressing** the willingness to create the legal framework necessary for the establishment of the Sustainable Tourism Zone in the Caribbean region;

**Conscious** of the need for airlines of the Member States and Associate Members to offer the traveling and shipping public a variety of air service options;

**Determined** to ensure the highest degree of operational safety and security in international civil aviation;

**Recognizing** the need for a general aviation policy for the Association of Caribbean States by which Member States and Associate Member States may be guided in their aviation arrangements;

**Recognizing** the importance of the Convention on International Civil Aviation opened for signature in Chicago on December 7, 1944, as the principal regulatory instrument for the conduct of international civil aviation;

**Have agreed as follows:**

**Article 1**  
**Definitions**

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

1. "Parties" means the Member States and Associate Members of the Association of Caribbean States or States that may conclude treaties on behalf of the Associate Members, which have signed and have deposited their instruments of ratification or accession with the Depository in accordance with Article 24 of this Agreement;
2. "Agreement" means this Agreement, its annexes, and any amendments thereto which have entered into force for the Parties, in accordance of the relevant provisions with this Agreement;
3. "Convention" means Convention on the International Civil Aviation, opened for signature in Chicago on December 7, 1944, and includes:
  - a. Any amendment that has entered into force under Article 94(a) of the Convention, which is in force among the Parties;
  - 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 the Parties;
4. "Territory" means the land areas, archipelagic waters and adjacent territorial waters under the sovereignty and jurisdiction of a Party in the ACS Region, according to the International Laws;
5. "Aeronautical Authorities" means the Civil Aviation Authorities of the Parties, or any other person or entity authorized to perform the functions of these Authorities;
6. "Designated airline(s)" means an airline authorized by the Aeronautical Authorities of one of the Parties, in accordance with Article 3 of this Agreement;
7. "International air transport" means air transport which passes through the airspace over the territory of more than one State;
8. "Air transport" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
9. "Tariff" means any price charged for the carriage of passengers and their baggage and/or cargo excluding mail in air transport by airlines, including their agents, and the conditions governing the availability of such price;

10. "Full cost" means the cost of providing service and may include a reasonable return on assets after depreciation;
11. "Stop over" means a predetermined interruption in a journey, which is continued with the same airline and document;
12. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or disembarking of passengers, cargo or mail;
13. "User fees" means any rate, tariff or tax charged for the use of airport, air navigation or security facilities or services including related services and installations.

B. Other terms should have the meaning assigned to them by the Convention.

## **Article 2** **Granting of Rights**

1. Each Party grants to the other Parties the following rights for the conduct of international air transport by the designated airlines of the other Parties:
  - a. The right to fly across its territory without landing;
  - b. The right to make stops for non-traffic purposes in its territory;
  - c. The right to operate third and fourth freedom traffic rights separately or in combination, on regular flights of passengers, cargo and mail;
  - d. In respect of the exercise of fifth freedom traffic rights on scheduled flights for passengers, cargo and mail, separately or in combination, within the ACS region, each Party shall select one of the following options:
    - i. The exercise of such rights among the Parties concerned;
    - ii. The exercise of such rights on the reciprocal and liberal exchange of rights among the Parties concerned.
2. Following consultations in accordance with Article 15, a Party shall have the right to temporally suspend fifth freedom operations when considered detrimental to its national interest. Such suspension shall come into effect ninety (90) days after the other Party has been notified in writing.
3. At the time of signing, ratification or accession to the Agreement a Party shall indicate whether it elects to be bound by sub-paragraph 1.d.i or sub-paragraph 1.d.ii of this Article. This election is without prejudice to a Party that elects to be bound by sub-paragraph 1.d.ii subsequently indicating to the

depository its wish to be bound by sub-paragraph 1.d.i of this Article.

4. The Parties shall favourably consider requests by designated airlines to operate non-scheduled passenger and/or cargo flights whenever these do not affect nor constitute unfair competition for scheduled flights.
5. For the purpose of promoting multi destination tourism the Parties grant stop over rights and direct transit traffic between their territories to the designated airlines.
6. Nothing in this Article shall be understood to mean that a Party grants to an airline of another Party the right of cabotage.

### **Article 3**

#### **A. Designation and Authorization**

1. Each Party shall have the right to designate up to two airlines to conduct the services agreed to in this Agreement and to withdraw or alter such designation. The designation shall be transmitted to the other Party in writing indicating whether the airline is authorized to conduct scheduled or non-scheduled air transport services, or both.
2. Upon receipt of such designation and application from the designated airline, in the form and manner prescribed for operating authorizations, the Aeronautical Authorities of the other Party shall grant appropriate authorization with minimum procedural delay, provided that:
  - a. Substantial ownership and effective control of that airline are vested in one or more Parties, its or their nationals or both; and
  - b. The headquarters of the designated airline are located in the territory of the Party designating the airline; and
  - c. The designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transport by the Party considering the application or applications; and
  - d. The Party that designates the airline is maintaining and administering the standards set forth in Article 6 and Article 7 of the Agreement.

#### **B. Community of Interest**

The right of each Party to designate an airline or airlines shall include designation in accordance with the Principle of Community of Interest as established by the International Civil Aviation Organization (ICAO). On receipt of such designation

and application from the designated airline in the form and manner prescribed for operating authorization the Aeronautical Authorities shall, without undue delay, grant the appropriate authorization provided the designated airline complies with the provisions of paragraph 2 c of the present Article. -. Once the designation is received, the responsibility for compliance with Articles 6 and 7 of the Agreement remains with the Party issuing the air operator's certificate to the designated airline.

**Article 4**  
**Revocation, Suspension and Limitation of Authorization**

1. A Party may revoke, suspend or limit the operating authorizations or technical permits of a designated airline where:
  - a. The airline no longer complies with the requirements set forth in Article 3 Paragraph 2. a, b and c;
  - b. The airline has failed to comply with the laws and regulations referred to in Article 5 of the Agreement;
  - c. The other Party is not maintaining and administering the standards as set forth in Article 6 of the Agreement.
2. Unless immediate action, is essential to prevent further non-compliance with paragraph 1 b or c of this Article, the rights established by this Article shall be exercised only after consultation with the Party concerned.
3. This Article does not limit the rights of a Party to withhold, revoke, limit or impose conditions for the operating authorizations of an airline or airlines of another Party in accordance with the provisions of Article 7 of the Agreement.

**Article 5**  
**Enforcement of Laws**

1. While entering, remaining in or leaving the territory of a Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the designated airlines.
2. While entering, remaining in or leaving the territory of a Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of such passengers, crew or cargo of the designated airlines, or their representatives.

**Article 6**  
**Safety**

1. The Parties shall adhere to the ICAO universal operational safety oversight programme, and will therefore promote reciprocal cooperation and assistance among Member States and Associate Members, particularly with regard to developing the plan of action adopted in each case after periodic evaluation carried out by ICAO.
2. If, upon publication of the ICAO report on the safety standards of any Party, that Party does not, (within a reasonable time frame, agreed upon between the Party and ICAO), apply corrective measures to guarantee that safety standards are met, (and the deadlines provided for in the plan of action expires), any Party can request consultation to urge that Party to observe the respective standards.

If after consultation no corrective measures are taken (and there has been at least one month's prior notice in writing), either Party can suspend, revoke or limit authorization granted to an airline or airlines designated by the Party which has not taken appropriate corrective measures within a reasonable period of time agreed upon by the Parties.

3. A Party which for economic or technical reasons, finds difficulty in complying with the provisions of paragraph 1 and 2, may request assistance from any other Party, in meeting its safety obligations under this Article.

## **Article 7** **Security**

1. In accordance with their rights and obligations under international law, the Parties reaffirm their obligation to each other to protect the security of civil aviation against acts of unlawful interference. Without prejudice to their rights and obligations under international law, the Parties shall act particularly in accordance with the terms 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, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation signed at Montreal on 24 February 1988, supplementary to the Montreal Convention of 1971.
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 aviation security.
3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention provided these security provisions are applicable to the Parties; they shall require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.
4. Each Party agrees that these operators of aircraft can be requested by the other Party to observe the security provisions mentioned in paragraph 3 of this Article for entry into, for departure from, and while within the territory of the 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. A Party shall also give positive consideration to any request from another Party for



special security measures to meet a particular security threat.

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the security 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 another Party has departed from the civil aviation security provisions of this Article, the Aeronautical Authorities of that Party may request immediate actions by the Aeronautical Authorities of the other Party. Failure to reach a satisfactory agreement within 14 days from the date of such request and if required by an emergency a Party may withhold, revoke, limit or impose conditions on the operating authorization and technical permits of an airline or airlines of that Party. The specific security concerns shall be subsequently subjected to the procedures of Article 15 of the Agreement.

## **Article 8**

### **Commercial Opportunities**

1. The designated airlines of a Party shall have the right to establish offices in the territory of another Party for the promotion and sale of air transport.
2. The designated airlines of a Party shall be entitled, in accordance with the laws and regulations of other Parties relating to entry, residence, and employment, to maintain in the territory of the other Parties managerial, sales, technical, operational, and other specialist staff required for the provision of air transport.
3. Air carriers can choose freely from among the different ground handling services available, and any charge must be reasonable, based on costs and on fair, uniform and non-discriminatory treatment.
4. A designated airline shall have the right to convert and transfer on demand net revenues obtained from the sale of the air transport services. Conversion and transference shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions on the date the carrier makes the initial application for remittance, according to the legislation in force in each country.

## **Article 9**

### **Code Sharing**

In operating international air services authorized under this Agreement, any designated airline of a Party may, with prior approval by the Aeronautical Authorities concerned, enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing agreements, with an airline of another Party.

### **Article 10**

### **Computerized Reservation Systems**

1. The Parties agree that:
  - a. The interests of the users of the air transport services will be protected from any misuse of information;
  - b. A designated airline and its agents will have unrestricted and non-discriminatory access to and use of Computer Reservation Systems (CRS) in the territory of the Parties.
2. The regulations and operation of CRS shall be governed by the Code of Conduct established by ICAO.

### **Article 11**

### **Customs Duties and Charges**

1. Aircraft on a flight to, from, or across the territory of a Party shall be admitted temporarily free of duty, subject to the customs regulations of that Party. Fuel, lubricating oils, spare parts, standard equipment and aircraft stores on board such aircraft, on arrival in the territory of another Party and retained on board on departure shall be exempted from customs duty, inspection fees or similar national or local duties and charges. This exemption will not be applicable to quantities of items unloaded, except where the contrary is provided for in accordance with the customs regulations of the relevant Party which can demand that said quantities of items remain under customs supervision.
2. Spare parts and equipment imported into the territory of a Party for incorporation in or use on an aircraft of another Party engaged in international air navigation shall be admitted free of customs duty, subject to compliance with the regulations of the Party concerned, which may provide that the articles shall be kept under customs supervision and control.

**Article 12**  
**User Fees**

1. User fees shall be fair, reasonable, non-discriminatory and equitably distributed among the categories of users.
2. User fees must reflect the full cost of providing and administering services, installations and facilities at airports, air navigation services and security. Installations and services provided must be efficiently and economically operated.
3. Each Party shall promote the exchange of information necessary for a reasonable revision of the fees, in accordance with paragraphs 1 and 2 of this Article. Each Party shall urge the competent authorities to inform users of any proposed change in fees, so as to allow them to express their views before such fees become effective.

**Article 13**  
**Fair Competition**

1. Each Party shall allow a fair and equal opportunity to the designated airlines of all Parties to compete in providing the international air transport governed by this Agreement.
2. Each Party shall take all appropriate actions within their respective jurisdictions to avoid and eliminate all forms of unfair competitive practices.
3. Each Party shall allow a 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, no 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 another Party, except for reasons of airport constraints, safety or security.
4. The airlines shall submit their flight-schedules they consider convenient according to the needs of the market, to the respective Aeronautical Authorities for approval.

**Article 14**  
**Tariffs**

1. The tariffs applicable by the designated airlines of each of the Parties shall

be established at reasonable levels, taking into account all relevant factors including the cost of providing service, a reasonable profit and the technical and economic characteristics of the different routes.

2. Without prejudice to the provisions of national legislation, the tariffs to be applied by the designated airline or airlines of any Party for services covered by this Agreement shall be subject to the principle of Country of Origin tariff approval.

### **Article 15** **Consultations**

A Party may, at any time, request consultations relating to this Agreement with one or more Parties concerned. Such consultations shall begin at the earliest possible date, but within 45 days from the date the other Party (or Parties) concerned receives the request, unless otherwise agreed.

### **Article 16** **Disputes Settlement**

Any dispute between the Parties concerning the interpretation and/or application of this Agreement shall be referred to an arbitral tribunal for consideration and decision where it has not been resolved by other dispute resolution mechanism, among others negotiation, consultation or mediation. The process of dispute settlement shall take account of the relevant ICAO policy guidance. The arbitral tribunal shall be governed by the procedure provided in Article 85 of the Convention and the decisions of the arbitral tribunal shall be binding upon the Parties.

### **Article 17** **Existing Agreements**

Bearing in mind the provisions in Article 2, this Agreement shall not affect any memorandum of understanding, bilateral or multilateral agreement showing similar authorizations that are already in force among the Parties or among the Parties and a non- Party nor the renewal thereof.

### **Article 18** **Duration and Withdrawal**

This Agreement shall have an indefinite duration. Any Party may at any time denounce this Agreement. The consequent withdrawal shall take effect one year

after the date of the receipt by the Depositary of the formal notification of denunciation. The denunciation shall be without prejudice to any obligation incurred by the denouncing Party under this Agreement prior to such denunciation. This Agreement shall continue to be in force thereafter with respect to the other Parties.

**Article 19**  
**Signature**

This Agreement shall be open for signature by any State, Country and Territory referred to in Article IV of the Convention Establishing the Association of the Caribbean States that has ratified or adhered to said Convention.

**Article 20**  
**Ratification**

This Agreement shall be subject to ratification, acceptance or approval by the States, Countries and Territories mentioned in Article IV of the Convention Establishing the Association of Caribbean States, in accordance with the respective Constitutional procedures.

**Article 21**  
**Accession**

After its entry into force, this Agreement shall remain open to accession by the States, Countries and Territories mentioned in Article IV of the Convention Establishing the Association of Caribbean States, in accordance with the respective constitutional procedures.

**Article 22**  
**Amendments**

This Agreement may be amended by consensus among the Parties. Amendments shall enter into force when one third of the Parties have deposited their instruments of ratification, acceptance or approval and shall have effect only as among Parties which have ratified, accepted or approved such amendments.

**Article 23**  
**Reservations**

A Party may enter reservations at the time of signing, ratifying, accepting, approving or acceding to this Agreement, which will be notified to the Depository, in accordance with the legislation of each Party.

Such reservations shall not modify the provisions of the Agreement with respect to the other Parties.

**Article 24**  
**Depository**

Instruments of Ratification, acceptance or approval or accession shall be deposited with the Government of the Republic of Colombia in its capacity as the Depository, which shall transmit certified copies to the Member States and Associate Members.

**Article 25**  
**Registration with ICAO**

The Government of the Republic of Colombia shall register this Agreement and all amendments thereto with the International Civil Aviation Organization.

**Article 26**  
**Entry into Force**

This Agreement shall enter into force on the 60<sup>th</sup> day after the deposit of the instrument of ratification, acceptance, approval or accession, when one third (nine) of the States, Countries and Territories mentioned in Article IV of the Convention Establishing the Association of Caribbean States have deposited their instruments of ratification, acceptance, approval or accession.

Done in Panama City, Panama on the 14<sup>th</sup> day of the month of February 2004, in a single copy in the English, French and Spanish languages, each text being equally authentic. The original text and any amendments shall be deposited with the Government of the Republic of Colombia in its capacity as the Depository.

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