

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

Joint Application of:

**American Airlines, Inc.**

and

**Philippine Airlines, Inc.**

For statements of authorization under 14 C.F.R. Part 212 (reciprocal codesharing) and exemptions pursuant to 49 U.S.C. § 40109

DOT-OST-2020-\_\_\_\_\_

Application of:

**American Airlines, Inc.**

For an amended exemption under 49 U.S.C. § 40109 (third-country codesharing authority)

DOT-OST-2009-0337

**Joint Application of American Airlines, Inc. and Philippine Airlines, Inc.  
for Statements of Authorization, Exemptions, and an Amended Exemption**

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March 17, 2020

**NOTICE: The applicants request expedited approval of this application. They will poll the U.S. carrier representatives served with this application and notify the Department promptly of the results.**

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Application of:

**American Airlines, Inc.**

For an amended exemption under 49 U.S.C. § 40109 (third-country codesharing authority)

DOT-OST-2009-0337

**Joint Application of American Airlines, Inc. and Philippine Airlines, Inc.  
for Statements of Authorization, Exemptions, and an Amended Exemption**

American Airlines, Inc. (and its affiliates, Envoy Air, Inc., PSA Airlines, Inc. and Piedmont Airlines, Inc.) (“American”) and Philippine Airlines, Inc. (“PAL”), (together, the “Joint Applicants”) hereby apply for the authorities listed below in order to permit the carriers to implement reciprocal codeshare services. The Joint Applicants urge the Department to act as expeditiously as possible so that they may begin offering beneficial new online services between the United States and the Philippines, via intermediate points, and points beyond listed in Annex B of the Joint Applicants’ codeshare agreement (Exhibit 1). Specifically, the Joint Applicants request:

- a) a statement of authorization to American, pursuant to 14 C.F.R. Part 212, to authorize

American to display PAL’s “PR\*” designator code on flights operated by American, with the

initial markets for these operations listed in Annex B of the Joint Applicants' codeshare agreement attached hereto as Exhibit 1;

- b) a statement of authorization to PAL, pursuant to 14 C.F.R. Part 212, to authorize PAL to display American's "AA\*" designator code on flights operated by PAL, with the initial markets for these operations listed in Annex B of the Joint Applicants' codeshare agreement attached hereto as Exhibit 1;
- c) pursuant to 49 U.S.C. § 40109, an exemption from 49 U.S.C. § 41101 to authorize American to provide foreign air transportation of persons, property, and mail from points behind the United States via the United States and intermediate points to a point or points in the Philippines and beyond, as listed in Annex B of the Joint Applicants' codeshare agreement;
- d) pursuant to 49 U.S.C. § 40109, an exemption from 49 U.S.C. § 41301 to authorize PAL to provide foreign air transportation of persons, property, and mail between a point or points in the Philippines, on the one hand, and the U.S. points listed in Annex B of the Joint Applicants' codeshare agreement, via Philippine Airlines' U.S. gateways, on the other hand; and
- e) an amendment to American's third-country codesharing exemption under 49 U.S.C. § 40109, which the Department of Transportation ("Department") granted to American in Docket DOT-OST-2009-0337, to the extent necessary, to add PAL to the list of foreign air carriers with which American has codeshare authorization and to permit American to display the "AA\*" designator code on flights operated by PAL.

The Joint Applicants intend to immediately market and engage in advance sales of these new codeshare services. Given the Department's consistent practice of approving similar arrangements, the Joint Applicants respectfully request expedited treatment of this application



and a waiver of the Department's 45-day advance filing requirement for statements of authorization. The Joint Applicants will poll the carrier representatives served with this application and advise the Department of the results.

In support of this application, the Joint Applicants state as follows:

1. The Joint Applicants have entered into a reciprocal codeshare agreement (Exhibit 1) under which, among other things, the Joint Applicants agreed to mutually designate certain flights on which American will display PAL's "PR\*" designator code and PAL will display American's "AA\*" designator code. The flights will be between the United States and the Philippines and to points beyond as set forth in Annex B to the Joint Applicants' codeshare agreement. A copy of the codeshare agreement, with sensitive commercial terms redacted, is attached as Exhibit 1. Granting this application will extend the range of American's and PAL's services to the mutual benefit of the traveling and shipping public and the Joint Applicants.

2. To implement the codeshare arrangement, American requests a statement of authorization to permit it to display PAL's "PR\*" designator code on flights operated by American, with the initial markets for these operations listed in Annex B of the Joint Applicants' codeshare agreement. (*See Exhibit 1.*)

3. PAL requests a statement of authorization to permit it to display American's "AA\*" designator code on flights operated by PAL, with the initial markets for these operations listed in Annex B of the Joint Applicants' codeshare agreement. (*See Exhibit 1.*)

4. The Joint Applicants request that the requested statements of authorization remain in effect indefinitely, consistent with the Department's practice.<sup>1</sup>

5. American also requests, to the extent necessary, exemption authority to provide foreign air transportation of persons, property, and mail from points behind the United States via the United States and intermediate points to a point or points in the Philippines and beyond, to authorize it to engage in the proposed codeshare services with PAL.

6. American further requests, to the extent necessary, an amendment to its broad exemption authority to provide scheduled foreign air transportation of persons, property and mail between the United States and points worldwide on a third-country codeshare basis pursuant to blanket codeshare authorization approved by the Department. Specifically, American seeks to add PAL to footnote 1 of the Department's Notice of Action Taken dated February 10, 2020 in Docket DOT-OST-2009-0337, which lists foreign carriers with which American has codeshare authorizations. The relief requested is similar to amendments that the Department has already issued to American in Docket No. DOT-OST-2009-0337 from time to time, as well as amendments to blanket exemption authority held by United Air Lines in DOT-OST-2004-19148 and Delta Air Lines in DOT-OST-2005-20145.

7. American is a citizen of the United States, within the meaning of 49 U.S.C. § 40102(a)(15)(C) and fit, willing, and able to perform the proposed service contemplated by this application. It holds certificates of public convenience and necessity and exemption authority from the Department to conduct interstate and foreign scheduled air transportation of persons,

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<sup>1</sup> See, e.g., Notice of Action Taken dated April 11, 2016, in Docket DOT-OST-2016-0040 (granting Hawaiian Airlines a statement of authorization for an indefinite duration to enable it to display the designator code of PAL on certain flights operated by Hawaiian).

property, and mail on various routes.<sup>2</sup> American requests that, pursuant to Rule 24, the Department take official notice of all data American has filed with the Department to establish its fitness.

8. American will accept and abide by all terms, limitations, and conditions that the Department normally attaches to the requested exemption authorities. American requests that the exemption authorities be granted (and reissued in the case of its exemption authority to provide service on a third-country codeshare basis) for a term of at least two years.

9. PAL further requests exemption authority to provide foreign air transportation of persons, property, and mail between a point or points in the Philippines, on the one hand, and the U.S. points listed in Annex B of the Joint Applicants' codeshare agreement, via Philippine Airlines' U.S. gateways, on the other hand, in order to engage in the proposed codeshare services with American.

10. PAL is fit, willing, and able to perform the proposed service contemplated by this application. It holds a foreign air carrier permit that authorizes it to provide scheduled combination service between the Philippines and certain points in the United States, including Guam, Honolulu, and Los Angeles.<sup>3</sup> The Department has granted PAL similar exemption authority pursuant to 49 U.S.C. § 40109 to engage in foreign air transportation of persons, property, and mail between a point or points in the Philippines and certain Hawaiian points,

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<sup>2</sup> See, e.g., DOT Notice of Action Taken dated Oct. 7, 2014 in Docket DOT-OST-2014-0169 (Dallas/Ft. Worth-Beijing); DOT Order 2007-4-2 (granting blanket open-skies route authority).

<sup>3</sup> Order 91-1-38.

under a codeshare agreement with Hawaiian Airlines.<sup>4</sup> PAL requests that, pursuant to Rule 24, the Department take official notice of all data PAL has filed with the Department to establish its fitness.

11. PAL will accept and abide by all terms, limitations, and conditions that the Department normally attaches to the requested exemption authority. PAL requests that the exemption authority be granted for a term of at least two years.

12. Approval of the requested codesharing authorities and exemptions is consistent with the provisions of the U.S.-Philippines Air Transport Agreement. Under the U.S.-Philippines Agreement, codesharing with a designated airline of either country is expressly recognized.<sup>5</sup> Philippine carriers may serve up to 24 U.S. points provided that a stop is made at a U.S. gateway under the Agreement, or the point is served on a codeshare basis only.<sup>6</sup> PAL will offer service to 8 U.S. points on a codeshare basis with American (Atlanta, Denver, Houston, Las Vegas, Miami, New Orleans, Orlando, and Washington, DC). The Joint Applicants understand that, pursuant to the U.S.-Philippines Agreement, the Philippine Department of Foreign Affairs has forwarded a diplomatic note to the U.S. Department of State selecting the 8 points that PAL will serve on a codeshare-only basis.

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<sup>4</sup> Notice of Action Taken dated April 11, 2016, (Docket DOT-OST-2016-0040), most recently renewed by Notice of Action Taken, dated August 3, 2018, renewal pending.

<sup>5</sup> See Protocol of Understanding between the Government of the United States of America and the Government of the Republic of the Philippines Amending and Supplementing the 1982 Air Transport Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines (Nov. 20, 1995), at 2 (amending the Agreement to add a new paragraph 6 to Article 8).

<sup>6</sup> See 1995 Protocol, at 3 (amending Annex I, Section 1, Subsection b, paragraph 2 bis).

13. Japan is the only third country appearing in the list of codeshare routes at Exhibit 1, Annex B. The authorities requested in this application are consistent with the aviation agreement governing air services between the United States and Japan.<sup>7</sup>

14. Approval of this application is in the public interest. The Joint Applicants' codeshare arrangement will enable each carrier to offer convenient additional services between the United States and the Philippines, and beyond. This will enhance competition as well as the U.S.-Philippines service options available to consumers. Moreover, since the requested codeshare authorization is consistent with the U.S.-Philippines Agreement, there is *prima facie* evidence that approval of this application is in the public interest.

15. American's compliance statement to the Federal Aviation Administration on PAL's IATA Operational Safety Audit is being reviewed. The Philippines is a Category 1 country.

16. The Joint Applicants agree to accept the conditions normally imposed on air carriers engaging in codesharing services to and from the United States, including 14 C.F.R. Part 257.

17. The codeshare services contemplated under this application will not impact American's commitments concerning the Civil Reserve Air Fleet.

18. Granting the application will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

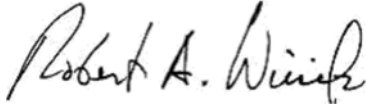
WHEREFORE, American and PAL respectfully request that the Department promptly (1) issue the requested statements of authorization to American and Philippine Airlines, (2) grant American the exemption authority and an amendment to its third-country codesharing exemption authority, as

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<sup>7</sup> U.S – Japan Memorandum of Understanding of October 25, 2010, Part VII. American holds the necessary underlying route authority to serve all open-skies partners of the United States. Order 2007-4-2 (granting blanket open-skies route authority).

requested herein, (3) grant PAL an exemption to serve the requested codeshare routes, (4) grant the advance filing waiver request, and (5) grant such other and further relief as the Department deems appropriate.

Respectfully submitted,



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March 17, 2020



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## **CERTIFICATE OF SERVICE**

I certify that, on March 17, 2020, I caused to be served a copy of the foregoing Joint Application for Statements of Authorization, Exemptions, and an Amendment to Exemption Authority by email upon those addressees listed below:

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yonhy@state.gov (Department of State)  
williamsds3@state.gov (Department of State)  
joel.szabat@dot.gov (Department of Transportation)  
brian.hedberg@dot.gov (Department of Transportation)  
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---

G. Brent Connor

**Exhibit 1**  
**Codeshare Agreement**



**CONFIDENTIAL**

**CODESHARE AGREEMENT**

**between**

**AMERICAN AIRLINES, INC.**

**and**

**PHILIPPINE AIRLINES, INC.**

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## CODESHARE AGREEMENT

This CODESHARE AGREEMENT (this “Agreement”), dated as of March 6, 2020, is

between **American Airlines, Inc.**, a corporation organized under the laws of the State of Delaware, United States of America, having its principal office at 1 Skyview Drive, Fort Worth, Texas 76155, United States of America (“**American**”),

and **Philippine Airlines, Inc.**, a corporation organized under the laws of Philippines, having its principal office at 8th Floor, PNB Financial Center, Pres. Diosdado Macapagal Avenue, CCP Complex, 1307 Pasay City, Metro Manila, Republic of the Philippines (“**Philippine Airlines**”)

In consideration of the mutual covenants and promises in this Agreement, American and Philippine Airlines hereby agree as follows:

### 1. DEFINITIONS

- 1.1 Terms with their initial letters capitalized shall have the meanings ascribed to them in Annex A of this Agreement or where they are elsewhere defined herein (including the Annexes hereto). Such ascribed meanings shall be equally applicable to both the singular and plural forms of such terms. American and Philippine Airlines may each be referred to as a “**Party**” and may collectively be referred to as the “**Parties**”.
- 1.2 The Parties agree that accepted industry procedures and agreements relating to the interlining of passengers and baggage, including those set forth in IATA Resolution 780 Interline Traffic Agreement – Passenger for all international carriage shall apply to the provision of air transport and the related transactions contemplated by this Agreement, except to the extent that they are inconsistent or conflict with the terms of this Agreement.

### 2. CODESHARE SERVICE

- 2.1 The Parties shall mutually designate certain flights on which the Parties shall place their respective Codes (each, a “**Codeshared Flight**”), which may include flights operated by their Authorized Affiliates and Authorized Wet Lessors, serving the city-pairs (each city-pair, a “**Codeshared Route**”) identified in writing by the Parties from time to time without formally amending this Agreement. The initial list of Codeshared Routes on which the Parties and their Authorized Affiliates and Authorized Wet Lessors may codeshare is attached hereto as Annex B.
- 2.2 Detailed procedures for implementing this Agreement will be set forth in the Procedures Manual, which will be prepared by the Parties in conjunction with this Agreement. The Procedures Manual, including any amendments or supplements thereto agreed in writing between the Parties from time to time, shall be incorporated by reference into and made a part of this Agreement; provided, however, that the terms of this Agreement shall prevail in the event of a conflict between a provision of this Agreement and any provision of the Procedures Manual.

- 2.3 The Operating Carrier for each Codeshared Flight shall provide to the Codeshared Passengers, at a minimum, the same standard of customer service as it provides to its own passengers traveling in the same class of service, which standard shall, in any event, be reasonably in accordance with the standards of customer service established by the Marketing Carrier for the comparable class of service on its flights. Minimum customer service standards, general passenger service procedures, and policies for the Codeshared Flights, including baggage services, are detailed in Annex C and the Procedures Manual.
- 2.4 The Parties shall use commercially reasonable efforts to coordinate their service schedules to maximize the convenience, and minimize the waiting time of passengers making connections between the Codeshared Flights and other flights operated by the Parties; provided, however, that neither Party is obligated to operate specific flights or service schedules and each Party retains the right to determine the service schedules of its own flights.
- 2.5 The Parties may add or discontinue Codeshared Flights, as may be mutually agreed, without formally amending this Agreement. In addition, (i) the Marketing Carrier may, in its sole discretion, at any time remove its Code from any or all Codeshared Flights without formally amending this Agreement, and (ii) the Operating Carrier may, in its sole discretion, at any time upon no less than [REDACTED] prior written notice require that the Marketing Carrier remove either permanently or for a period to be determined by the Operating Carrier in its sole discretion, the Marketing Carrier's Code from any or all Codeshared Flights, in each case of (i) and (ii) above, without formally amending this Agreement. The Parties agreement to effect such changes shall be evidenced by both the Marketing Carrier and the Operating Carrier publishing such changes in the Airline Guides, CRSs or Reservations Systems. The Operating Carrier reserves the right to discontinue any specific route, flight number, equipment or schedule. In the event of such discontinuation, the Operating Carrier shall notify the Marketing Carrier as soon as reasonably possible and the Marketing Carrier shall cooperate in publishing the resulting changes to affected Codeshared Flights in the Airline Guides, CRSs, Reservations Systems, and other sources of airline schedule information.
- 2.6 Except as otherwise provided in the Procedures Manual, in the event of any flight cancellation or other schedule irregularity, involuntary rerouting or denied boarding by the Operating Carrier with respect to a Codeshared Flight, the Operating Carrier shall:
- (a) ensure that all passengers shall be handled in accordance with the same policies and procedures to avoid any discrimination against a Codeshared Passenger;
  - (b) at its own cost and expense (except to the extent such irregularity, involuntary rerouting or denied boarding is caused by the Marketing Carrier), accommodate and/or pay denied boarding compensation or otherwise compensate Codeshared Passengers, in the same manner as its own passengers and subject to the provisions of the Procedures Manual and Applicable Law; and
  - (c) notify the Marketing Carrier in accordance with the Procedures Manual.
- 2.7 The Conditions of Carriage of the Marketing Carrier, including its limits of liability to passengers, shall govern the transportation of Codeshared Passengers, and the Conditions of Carriage of the Operating Carrier, including its limits of liability to passengers, shall apply to those passengers traveling on the Codeshared Flights under the Code of the

Operating Carrier. The respective Conditions of Carriage of the Parties shall be notified to the passengers to the extent and in the manner required by Applicable Law, rules and regulations. Notwithstanding anything in this Section 2.7, the liability of the Parties to each other with respect to passenger claims shall be governed by Sections 17 and 18.

- 2.8 (a) The Party that is the Operating Carrier (or whose Authorized Affiliate or Authorized Wet Lessor is the Operating Carrier) shall ensure that each Codeshared Flight shall be operated under its operating certificate or under the operating certificate of an Authorized Affiliate or Authorized Wet Lessor.
- (b) If there is a change in the carrier scheduled to operate a Codeshared Flight, the Operating Carrier shall promptly notify the Marketing Carrier of such change. The Marketing Carrier shall take all appropriate steps to ensure that Codeshared Passengers are notified of the change as soon as possible. If the Operating Carrier fails to notify the Marketing Carrier of a change or a change occurs within [REDACTED] of scheduled departure, the Marketing Carrier shall be deemed to have insufficient time to notify Codeshared Passengers of the change. The Marketing Carrier may thereupon continue to notify Codeshared Passengers of the change in accordance with its customer service policies if it is able to do so but the Operating Carrier shall take primary responsibility for notifying all Codeshared Passengers still booked under the Marketing Carrier Code of the change at time of check-in. In the event re-accommodation is necessary either because the substituted carrier is not an Authorized Affiliate or Authorized Wet Lessor, or because a Codeshared Passenger who is notified of such a change elects not to travel on the substituted carrier, the notifying carrier shall at its own cost and expense re-accommodate the Codeshared Passenger unless the passenger seeks a refund in which event the Marketing Carrier shall be responsible for making such refund in accordance with its fare rules, conditions of carriage and Applicable Law.
- 2.9 Notwithstanding anything in this Agreement to the contrary the Operating Carrier may, at its sole discretion, operate any or all of the Codeshared Flights with aircraft operated under the operating certificate of a third party carrier (an "Authorized Wet Lessor") and wetleased by such Authorized Wet Lessor to the Operating Carrier for the purpose of operating such Codeshared Flights (such Codeshared Flights hereafter to be referred to as "Wetleased Codeshared Flights"); provided, however, that (i) prior to operating any such Wetleased Codeshared Flights any Authorized Wet Lessor shall be approved by the Marketing Carrier in writing, which approval may be withheld in the Marketing Carrier's sole discretion, (ii) the Operating Carrier and such Authorized Wet Lessor shall comply with all Applicable Law with respect to such Wetleased Codeshared Flights, (iii) the applicability of this Section 2.9 shall be subject to the Parties receiving all Governmental Approvals with regard to such Wetleased Codeshared Flights and to a successful completion of the IATA Operational Safety Audit (IOSA) registration by such Authorized Wet Lessor, (iv) the Marketing Carrier may withdraw any approval as provided in Section 2.9(i) at any time in its sole discretion, and (v) such Wetleased Codeshared Flights (if any) shall be subject to all of the terms and conditions of this Agreement as if they are operated with aircraft operated under the operating certificate of the Operating Carrier itself. Notwithstanding anything herein to the contrary, (x) in the event the Authorized Wet Lessor does not successfully complete the IOSA registration or after initial successful completion of the IOSA registration at any time during the term of this Agreement does not maintain the IOSA registration or does not successfully complete any follow-up audits as required by the IOSA rules and regulations (as they are in force from time to time), the

Marketing Carrier shall have the right, at the sole cost of the Operating Carrier, to conduct a reasonable safety and/or service review of the Authorized Wet Lessor's operations, manuals, and procedures reasonably related to the Wetleased Codeshared Flights (the "Authorized Wet Lessor Reviews"), at such intervals as the Marketing Carrier shall reasonably request; and (y) nothing in this Section 2.9 shall prevent the Marketing Carrier from, at its sole discretion and at its sole cost and expense, performing additional safety audits of such Authorized Wet Lessor and the aircraft to be used for the operation of such Wetleased Codeshared Flights and the Operating Carrier shall use reasonable efforts to cause the Authorized Wet Lessor to agree to such additional safety audits; provided, however, that such Authorized Wet Lessor Reviews and additional safety audits shall be performed at reasonable times and within a reasonable timeframe and without interrupting the Authorized Wet Lessor's operations.

### **3. IMPLEMENTATION AND EXPENSES**

3.1 Implementation of this Agreement shall be subject to the following conditions precedent:

- (a) the execution of a Special Prorate Agreement and a Mutual Emergency Assistance Agreement, in form and substance satisfactory to American and Philippine Airlines;
- (b) receipt by American and Philippine Airlines of all necessary Government Approvals;
- (c) successful completion by American and Philippine Airlines of the IATA Operational Safety Audit (IOSA) registration; and
- (d) successful implementation and testing of codeshare (EDIFACT) and passenger processing automation.

3.2 Each Party shall bear its own costs and expenses of performance under this Agreement, including, without limitation, costs and expenses associated with the following, unless otherwise agreed in writing between the Parties:

- (a) any systems to support the automation of procedures and settlement relating to the Codeshared Flights (e.g., PNR exchange, yield management, revenue accounting, etc.), including routine maintenance thereof, and
- (b) roadside, exterior, check-in, concourse, gate and baggage service signage placed at airports and city ticket offices in locations served by the Codeshared Flights in order to facilitate travel on the Codeshared Flights.

3.3 Each Party shall retain all right, title and interest in systems, software, signage, equipment and facilities funded by it. Ownership of jointly funded items shall be determined by the Parties in advance of each specific project.

### **4. INVENTORY CONTROL AND PROCEDURES**

4.1 The availability of Marketing Flights will be controlled by standard AVS (availability status) of the Operating Carrier. The Marketing Carrier will have access to the Operating Carrier's local inventory class availability through an automated computerized interface,

which both Parties will maintain throughout the term of this Agreement, to expedite the sale of seat inventory on the Codeshared Flights. Detailed procedures for implementing and maintaining seat inventory access are contained in the Procedures Manual. The Parties agree to meet on a regular cadence to discuss implementation of Interactive Availability and Interactive Sell of the Operating Carrier functionality in accordance with Annex C in order to replace AVS.

- 4.2 The Parties will map inventory classes of the Marketing Carrier to inventory classes of the Operating Carrier for the Codeshared Flights, in accordance with the Procedures Manual. The Parties will endeavor to map the average coupon value of the Marketing Carrier's inventory classes to comparable classes of the Operating Carrier to provide similar access for bookings made by the Marketing Carrier for passengers yielding comparable revenue values; it being understood, however, that the Operating Carrier retains ultimate control over the opening, closing and other management of seat inventory availability on Codeshared Flights. Each Party shall use commercially reasonable efforts to provide equal inventory access to Codeshared Passengers in inventory classes where such passengers yield comparable revenues as the Operating Carrier's passengers.
- 4.3 This Section 4.3 shall govern the published fares of the Marketing Carrier offered on Codeshared Flights as follows:
- (a) For Routes served by only one Party, or its Affiliates, fares and fare rules filed by the Marketing Carrier for codeshare itineraries will match those of the Operating Carrier.
  - (b) For Routes served by both Parties or their Affiliates, the fares and fare rules filed by the Marketing Carrier will match either those filed for its own flights or those filed by the Operating Carrier.
  - (c) For Routes where one Party, or its Affiliates, offers non-stop service and the other Party, or its Affiliates, offers connecting service, the Marketing Carrier on the non-stop service will match the fares and fare rules filed by the Operating Carrier on the non-stop service.
  - (d) For Routes where the Marketing Carrier on a one-stop service also operates its own non-stop service, the Marketing Carrier will match either the fares and fare rules of the one-stop operator or apply the fares and fare rules of its own non-stop service.
  - (e) In the event of the Marketing Carrier's breach of Sections 4.3(a), (b), (c) or (d), the Operating Carrier shall have the right, in its sole discretion, after [REDACTED] prior written notice to the Marketing Carrier, to restrict or close the inventory access of the Marketing Carrier or remove the Code of the Marketing Carrier from the flight(s) in question, or to temporarily remove its own Code from the flight(s) operated by the defaulting Party on the Routes where the breach occurred.
  - (f) Nothing in this Agreement shall prevent the Marketing Carrier from (i) initiating and operating its own service in any origin and destination city pair at any time; or (ii) offering any fare(s), discount(s) or rebate(s) of any kind for interline itineraries valid on airlines, other than American or Philippine Airlines, on any origin and destination city pair.

- 4.4 Each Party shall establish fares and rates independently, subject to the provisions of the applicable air transport agreements between the United States and the Philippines, on the one hand, and the governments of any country to which the Parties shall provide service pursuant to this Agreement, on the other hand.

5. **MARKETING AND PRODUCT DISPLAY**

- 5.1 The Codeshared Flights will be marketed and promoted by the Marketing Carrier under its Code. Each Party shall ensure that its respective advertising and promotions comply with all applicable governmental laws, rules and regulations of any applicable Competent Authority. The Marketing Carrier shall comply with 14 C.F.R. Parts 257 and 258, and any other applicable rules regarding the disclosure and holding out of Codeshared Flights provided for herein in the jurisdiction where such rules apply. The Marketing Carrier shall disclose to the extent required by Applicable Law through industry-approved schedule and selling mechanisms (as defined in the Procedures Manual), to consumers, travel agents and others selling the Codeshared Flights, as well as through any advertising, point of sale disclosures, and any other appropriate means, that each Codeshared Flight is a flight of and operated by the Operating Carrier. Such information shall be given before a reservation is made and in any event at the earliest reasonable opportunity and before the passenger arrives at the airport, in accordance with Applicable Law. In addition, each Party shall use commercially reasonable efforts to implement procedures to disclose the Operating Carrier and the appropriate departure and arrival terminal at the earliest possible opportunity and in particular at the point of sale.
- 5.2 The Marketing Carrier shall identify the Codeshared Flights, in accordance with Applicable Law, in Airline Guides, CRSs, Reservations Systems and other sources of airline schedule information using the Marketing Carrier's Code. Any costs incurred for the publication of Marketing Flights or connections to and from such flights in Airline Guides, CRSs, Reservation Systems and other sources of airline schedule information shall be borne by the Marketing Carrier. Each Party shall include the Codeshared Flights in its Reservations Systems.
- 5.3 If the Marketing Carrier is not authorized to offer air transport services in a particular local Codeshared Route, the Marketing Carrier shall file its standard schedule data for the Codeshared Flights on such Codeshared Route using the traffic restriction code "O" or "Y" (or any successor code), as appropriate, as defined in the IATA Standard Schedules Information Manual, Appendix G, in order to suppress the display of the Marketing Flights on such local Codeshared Route(s) (i.e., the Marketing Flights on such route will be limited to passengers connecting online to another flight marketed and/or operated by the Marketing Carrier).
- 5.4 Unless otherwise agreed, all information and advertising materials produced with the aim of promoting the Codeshared Flights shall clearly identify both Parties. All joint advertising and promotion of the Codeshared Flights shall be subject to prior agreement between the Parties and the costs of such joint advertising and promotion shall be shared based on prior agreement.
- 5.5 Each Party may use its own flight number in referencing the Codeshared Flights except that only the Operating Carrier's flight number shall be used in actual flight operations (e.g., air traffic control).



## 6. TRAFFIC DOCUMENT ISSUANCE AND FINANCIAL SETTLEMENT

- 6.1 Passenger traffic documents for use on the Codeshared Flights may be issued by either Party, or by third parties with whom the Parties from time to time have interline traffic agreements.
- 6.2 All Marketing Carrier Flight Coupons honored on Codeshared Flights shall be uplifted by the Operating Carrier, which is responsible for processing and billing of such documents as follows:
- (a) The Operating Carrier shall bill uplifted coupons to the Ticketing Carrier using routine applicable interline settlement process and procedures. Subject to Section 6.2(b) and 6.2(c), Marketing Carrier Flight Coupons issued by the Marketing Carrier as Ticketing Carrier shall be treated for proration and billing purposes as if they showed the Operating Carrier's designator Code in the Carrier Code Box of the Marketing Carrier Flight Coupons. Such Marketing Carrier Flight Coupons will be prorated and billed according to the Special Prorate Agreement between the Operating Carrier and the Ticketing Carrier, or, in the absence of an applicable Special Prorate Agreement, in accordance with the IATA Prorate Manual-Passenger ("IATA PMP"), as applicable.
  - (b) If the Operating Carrier does not have an interline traffic agreement with a Ticketing Carrier that issued a Marketing Carrier Ticket, and is unable to obtain satisfactory settlement, the Operating Carrier may bill such coupon to the Marketing Carrier as an exceptional item (i.e., via correspondence) and such coupons shall be valued for billing and proration purposes according to the IATA PMP.
  - (c) If the Operating Carrier has an interline traffic agreement with a Ticketing Carrier that issued a Marketing Carrier Ticket but is unable to obtain satisfactory settlement, the Marketing Carrier shall assist the Operating Carrier to the extent commercially reasonable in settling such account but shall not be liable for any losses incurred due to an unsatisfactory settlement.
- 6.3 For Codeshared Flights, the Operating Carrier shall on [REDACTED] determine the gross prorated value (as determined in accordance with Section 6.2(a)) of Marketing Carrier Flight Coupons uplifted by it during [REDACTED] and calculate the commission (the "**Codeshare Commission**") by multiplying such coupon values by the applicable commission percentages set forth in Annex E. This process of assessment of the Codeshare Commission shall be separate from the billing for each individual Marketing Carrier Flight Coupon. The Operating Carrier shall credit the account of the Marketing Carrier for the aggregate Codeshare Commission through the IATA Clearing House as source code "24". The Operating Carrier shall provide supporting data (including Codeshare Commission usage files) to the Marketing Carrier no later than [REDACTED] after the [REDACTED] via File Transfer Protocol ("FTP") (e.g., if the Operating Carrier were to issue an [REDACTED] credit to the Marketing Carrier on [REDACTED] then supporting data should be provided to the Marketing Carrier by [REDACTED]). The Marketing Carrier shall be entitled to review and, if appropriate, dispute, via correspondence, the Operating Carrier's calculation of the Codeshare Commission; provided, however, the Operating Carrier must receive note of such dispute

within [REDACTED] from the [REDACTED]. Any resulting payments will be processed through the IATA Clearing House.

- 6.4 The Ticketing Carrier, if the Marketing Carrier or the Operating Carrier, shall receive the Interline Service Charge, as provided in the Interline Traffic Agreement. In the event the Ticketing Carrier is a third party, the Ticketing Carrier shall receive the Interline Service Charge and/or Ticket Handling Fee as agreed between the Operating Carrier and such third party.
- 6.5 To support interline billing by the Operating Carrier to third-parties and involuntary rerouting and refunding of Marketing Carrier Tickets by the Operating Carrier, the Marketing Carrier hereby waives endorsement requirements for the Operating Carrier with respect to all Marketing Carrier Flight Coupons. Unless otherwise agreed in writing by the Parties, such waiver shall be effective [REDACTED] before the Implementation Date, and shall remain in effect for [REDACTED] after the Termination Date of this Agreement to facilitate the reaccommodation of any Codeshared Passengers ticketed for travel after the Termination Date.
- 6.6 Differences that may appear after the billing process has been completed shall be rectified by written correspondence or a meeting between the Parties.
- 6.7 In a sufficient amount of time before the Implementation Date, the Marketing Carrier will submit TCN data to ATPCO, through which the Marketing Carrier will provide, among other items, own-office sales data.

## **7. FACILITIES**

The Parties acknowledge the importance of maintaining functional and accurate signs identifying the Operating Carrier and the Marketing Carrier, as appropriate, to facilitate passenger convenience and to avoid passenger confusion at airports served by the Codeshared Flights. The Parties shall cooperate on the placement of such signs, subject to the approval of the relevant airport authority or other lessors.

## **8. TRAINING**

- 8.1 Except as otherwise agreed, each Party shall provide or arrange, at its own cost and expense, all initial and recurring training of its personnel to facilitate the Codeshared Flights and operations at airports served by the Codeshared Flights, including reservations and ticket offices, and other points of contact between the Parties and the public. This training shall include passenger service, reservations and sales activities, and in-flight service involving the Codeshared Flights, all as more fully described in the Procedures Manual.
- 8.2 The Parties shall share any training materials (except trade secrets and legal advice) developed to support the Codeshared Flights. All intellectual property or similar rights to any materials exchanged shall remain with the Party who originally developed such materials.

9. **SECURITY**

- 9.1 The Parties shall cooperate in matters of security procedures, requirements, and obligations at all airports served by the Codeshared Flights.
- 9.2 The Operating Carrier reserves the right to apply the provisions of its own security programs to the carriage of all passengers, baggage and cargo on board the Codeshared Flights, provided that such security programs shall, at a minimum, comply with the standards set forth by the relevant Competent Authorities and be reasonably acceptable to the Marketing Carrier, with the understanding that safety and security are of the utmost importance to both carriers. Such provisions may include any then applicable procedures used for the physical screening of passengers, baggage or cargo, interviewing of passengers, and/or selective loading of baggage or cargo.
- 9.3 The checking of the travel documents of each Codeshared Passenger and the handling of Codeshared Passengers who are Inadmissible Passengers (as such term is defined in IATA Resolution 701, as modified, supplemented or amended from time to time) shall be done in accordance with the procedures outlined in the Procedures Manual.

10. **SAFETY AND MAINTENANCE**

- 10.1 The Operating Carrier has operational control of the aircraft and final authority and responsibility concerning the operation and safety of the aircraft and its passengers, including Codeshared Passengers. The Operating Carrier shall employ the same high standards of safety, security and loss prevention policies on the Codeshared Flights as on its own flights. Emergency support shall, at a minimum, be in accordance with the Mutual Emergency Assistance Agreement in force between the Parties.
- 10.2 The Operating Carrier shall have sole responsibility for the maintenance of its leased and owned aircraft, and for other equipment used in connection with the Codeshared Flights. Maintenance of such aircraft and equipment must, at a minimum, comply with the standards imposed by the relevant aeronautical authorities.
- 10.3 The Marketing Carrier shall have the right, at its own cost, to review and observe the Operating Carrier's operations of Codeshared Flights, and/or to conduct a reasonable safety and/or service review of the Operating Carrier's operations, manuals, and procedures reasonably related to the Codeshared Flights (the "**Marketing Carrier Reviews**"), at such intervals as the Marketing Carrier shall reasonably request. The Marketing Carrier Reviews shall be coordinated with the Operating Carrier so as to avoid disruptions to the Operating Carrier's operations. Such reviews will be limited to areas that reasonably relate to the Operating Carrier's safety standards and service obligations under this Agreement. **NOTWITHSTANDING THE FOREGOING, THE MARKETING CARRIER DOES NOT UNDERTAKE ANY RESPONSIBILITY OR ASSUME ANY LIABILITY FOR ANY ASPECT OF THE OPERATING CARRIER'S OPERATIONS, NOR SHALL THE OPERATING CARRIER BE ENTITLED TO ASSERT ANY RESPONSIBILITY OR ASSUMPTION OF LIABILITY ON THE PART OF THE MARKETING CARRIER FOR THE OPERATING CARRIER'S OPERATIONS.**

**11. FREE AND REDUCED RATE TRANSPORTATION**

Unless otherwise provided by relevant agreements between the Operating Carrier and other parties, including the Marketing Carrier, neither the Marketing Carrier, nor the Operating Carrier, nor any third party, shall be entitled to ticket industry non-revenue or discounted (i.e., agency discount, industry discount, etc.) travel on the Marketing Flights, and the Operating Carrier shall not honor any Marketing Carrier Flight Coupons for such industry non-revenue or discounted travel, except at the Operating Carrier's expense.

**12. OTHER MARKETING PROGRAMS**

- 12.1 The Frequent Flyer Participating Carrier Agreements, if any, shall govern the participation of each Party in the other Party's frequent flyer program
- 12.2 If access of the Marketing Carrier's First and Business Class Codeshared Passengers to the Operating Carrier's airport lounge on the day of their departure will be provided, such access and the terms and conditions thereof shall be governed by the lounge access agreement to be negotiated by the Parties in good faith (if any).

**13. TRADEMARKS AND CORPORATE IDENTIFICATION**

- 13.1 Neither Party hereto shall use any of the other Party's or such Party's respective Affiliates' names, logos, logotype, insignia, service marks, trademarks, trade names, copyrights, corporate goodwill or other proprietary intellectual property, including without limitation the names "American Airlines, Inc.", "American Airlines", "American", "American Eagle", "AAdvantage", "Envoy Air", "Envoy", "Piedmont Airlines", "Piedmont", "PSA Airlines", "PSA", "Philippine Airlines, Inc.", "PAL", "Philippine Airlines", "Air Philippines Corporation", "PAL Express" or "Mabuhay Miles" in any marketing, advertising or promotional collateral, including without limitation credit card and telecom solicitations, except where each specific use has been approved in advance by the other Party. When such approval is granted, either Party shall comply with any and all conditions that the other Party may impose to protect the use of any of that Party's names, logos, logotype, insignia, service marks, trademarks, trade names, copyrights, corporate goodwill or other proprietary intellectual property.
- 13.2 Except as expressly provided herein, no right, property, license, permission or interest of any kind in the use of any name, logo, logotype, insignia, service mark, trademark, trade name, copyright, corporate goodwill or other proprietary intellectual property owned by either Party or its respective Affiliates is intended to be given to or acquired by the other Party, its agents, servants or other employees by the execution or performance of this Agreement.
- 13.3 Each of Philippine Airlines and American acknowledges for all purposes that any and all logos, trademarks, service marks, and trade names of the other, whether registered or not, are and shall at all times remain the exclusive property of the other Party, and may not be used without the prior written consent of such Party, except as set forth herein. Each of Philippine Airlines and American further acknowledges that any goodwill or other rights that arise as a result of the use by it of the other Party's marks, as permitted under this Agreement, shall accrue solely to the benefit of the Party owning such marks, whether registered or not. Should any right, title or interest in the logos, trademarks, service marks or trade names of a Party become vested in the other Party, the latter Party shall hold such right, title and interest in trust for the benefit of the former Party and shall, at the request

of the former Party, promptly and unconditionally assign such right, title and interest to the former Party without royalties or compensation of any kind. Each of Philippine Airlines and American hereby grants to the other, a non-exclusive, non-transferable, royalty-free license for the term of this Agreement to use their respective service marks ("Philippine Airlines" for Philippine Airlines and "American Airlines" for American, each a "**Licensed Trademark**"), subject to the terms and conditions set forth in this Section 13. This license is limited to the use of the Licensed Trademarks in connection with the advertising and promotion of the Codeshared Flights contemplated by this Agreement and the Frequent Flyer Participating Carrier Agreement (if any).

- 13.4 Each Party agrees to use the Licensed Trademarks only in a manner approved in advance and in writing by the Party owning such Licensed Trademarks. Each Licensed Trademark shall be marked with an ®, TM or SM or other symbol, as appropriate, and reference a legend indicating that "Philippine Airlines is a service mark of "Philippine Airlines, Inc." or "American Airlines is a service mark of American Airlines, Inc.", as the case may be, or similar words to that effect.
- 13.5 Each Party agrees that all advertising and promotional materials bearing the Licensed Trademarks in relation to air transportation services contemplated by this Agreement shall meet the quality and presentation standards as set forth by the Party owning the relevant Licensed Trademark.
- 13.6 Each Party has sole discretion to determine the acceptability of both the quality and presentation of advertising and promotional materials using its Licensed Trademark.
- 13.7 Each Party is responsible for providing to its own authorized agents and airport locations the agreed promotional materials bearing the Licensed Trademarks.

#### **14. REPRESENTATIONS AND WARRANTIES**

- 14.1 Each of Philippine Airlines and American hereby represents and warrants to the other as follows:
  - (a) It is a duly incorporated and validly existing corporation, in good standing under the laws of its jurisdiction of incorporation; is an air carrier duly authorized to act as such by the government of its country of incorporation; and has the requisite corporate power and authority to enter into and perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement by it have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by it, and, assuming due authorization, execution, and delivery by the other Party hereto, this Agreement constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited or modified by the effect of bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and the application of general principles of equity and public policy.
  - (b) The execution, delivery or performance by it of this Agreement, shall not: (i) contravene, conflict with or cause a default under (A) any Applicable Law, rule or regulation binding on it, or (B) any provision of its Charter, Certificate of Incorporation, Bylaws or other documents of corporate governance; or (ii) contravene, or cause a breach or violation of, any agreement or instrument to which

it is a Party or by which it is bound, except where such conflict, contravention or breach would not have a material adverse effect on it and its Affiliates, or on the operations of it or its Affiliates, taken as a whole, or on its ability to perform this Agreement.

- (c) The execution, delivery and performance by it of this Agreement do not require the consent or approval of, or the giving of notice to, the registration with, the recording or filing of any documents with, or the taking of any other action in respect of, any Competent Authority, any trustee or holder of any of its indebtedness or obligations, any stockholder or any other Person or entity, other than the Governmental Approvals (to be obtained by it, as indicated in Annex F), except where failure to obtain or take such action would not have a material adverse effect on it or a material adverse effect on the transactions contemplated in this Agreement.
- (d) Each of the foregoing representations and warranties shall survive the execution and delivery of this Agreement.

## 15. GOVERNMENTAL APPROVALS

- 15.1 The Codeshared Flights shall not commence until all required Governmental Approvals are received. Each Party shall use all commercially reasonable efforts to obtain those Governmental Approvals for which it has been allocated responsibility under Annex E, and any other Governmental Approvals that may hereafter be identified.
- 15.2 If the Governmental Approvals are obtained with respect to some but not all of the Codeshared Routes listed in Annex B, the Parties may determine whether to proceed under this Agreement solely with respect to the approved Codeshared Routes, and the Parties shall thereafter continue to endeavor to obtain approval of the remaining city-pair markets.
- 15.3 If the Parties obtain none of the Governmental Approvals required for the Codeshared Routes listed in Annex B within [REDACTED] of the Effective Date, or if all of such Governmental Approvals are given with substantial unfavorable restrictions or conditions (each Party to determine in its sole discretion the reasonableness of such restrictions or conditions), the Parties shall negotiate in good faith to find an equitable solution to enable the commencement of the Codeshared Route(s). If a solution cannot be formulated within [REDACTED] following commencement of such negotiations, either Party may terminate this Agreement upon [REDACTED] prior written notice to the other Party.
- 15.4 Each Party shall immediately provide the other Party with copies of any correspondence or notices it receives from any Competent Authority with respect to the Codeshared Routes, Codeshared Flights or this Agreement, including with respect to the airworthiness of the aircraft used for the Codeshared Flights or noncompliance by the Operating Carrier with operational, training or safety rules and procedures.

## 16. TERM

- 16.1 This Agreement shall become effective on the date first written above ("Effective Date") and shall remain in effect until terminated pursuant to Section 15 (Governmental Approval), Section 16.2 (Termination Events), Section 16.3 (Suspension Right), Section

21 (Force Majeure) or Section 27 (Severability), or Annex B (Codeshared Flights), or Annex C (Ground/In-Flight Services). Implementation of this Agreement shall be on the Implementation Date, subject to the Parties' execution of the Mutual Emergency Assistance Agreement.

16.2 In addition to any other termination rights provided herein, this Agreement may be terminated as follows:

- (a) at any time by mutual written consent of the Parties hereto;
- (b) at any time after the [REDACTED] anniversary of the Effective Date by either Party upon providing at least [REDACTED] prior written notice to the other Party, such notice to be served no earlier than the end of the [REDACTED] full calendar month following the Effective Date;
- (c) by the non-breaching Party upon the breach of a material term, covenant, representation or warranty of this Agreement (other than a breach of a payment obligation under Section 6 of this Agreement or the failure to otherwise pay any sums due pursuant to this Agreement), including a failure to comply with any material obligations and procedures set forth in the Procedures Manual, provided that the non-breaching Party provides the breaching Party prior written notice describing the alleged breach with as much particularity as reasonably practicable. Termination under this Section 16.2(c) shall not be effective if the breaching Party corrects such breach within [REDACTED] following receipt of such notice. If such breach cannot be corrected within [REDACTED] following receipt of such notice, and the breaching Party so advises the non-breaching Party, the non-breaching Party, in its sole discretion, may give the breaching Party an additional period of time not to exceed [REDACTED] to correct the breach, provided that the breaching Party has taken action reasonably contemplated to correct such breach following receipt of the notice;
- (d) by the non-breaching Party upon the breach of a payment obligation under Section 6 of this Agreement or the failure to otherwise pay any sums due to the non-breaching Party pursuant to this Agreement by the breaching Party, after the non-breaching Party provides the breaching Party at least [REDACTED] prior written notice describing, with as much particularity as practical, the alleged breach, and the breaching Party does not, within [REDACTED] following receipt of such notice, correct such breach;
- (e) at any time by either Party upon written notice if the other Party (i) makes an assignment for the benefit of creditors; (ii) suspends the payment of or admits in writing its inability to pay, or generally fails to pay, its debts as they become due; (iii) has suspended (as declared by a clearing house) its transactions with banks and/or other financial institutions or proposes or commences a moratorium upon or extension or composition of its debts; (iv) has issued against it any writ, execution, process or abstract of judgment that may have a material adverse effect on it and that is not dismissed, satisfied or stayed within [REDACTED]; or (v) files a petition for bankruptcy, composition, corporate reorganization, corporate liquidation, arrangement or special liquidation proceedings; or (vi) ceases all or a substantial part of its operations (other than due to Force Majeure as defined in Section 21); or



- (f) by either Party upon [REDACTED] prior written notice following receipt by such Party of written notice from the other Party (i) that such other Party has merged or consolidated with or into any other Person or entity, except where the shareholders of such Party (as measured on the day immediately prior to the effective date of such merger or consolidation) immediately after the merger or consolidation continue to own [REDACTED] of its voting stock and, if the Party hereto is not the surviving entity, the surviving entity assumes all of the obligations and responsibilities of the Party under this Agreement; (ii) that such other Party has sold or otherwise transferred all or substantially all of its assets to any other Person or entity; (iii) that such other Party has had [REDACTED] or more of its voting stock acquired, directly or indirectly, by a third party (or third-parties acting as a group) in one or a series of transaction and, as a result, such third party (or group) has the right to direct the management and policies of the Party, or (iv) that more than [REDACTED] of its voting stock is owned at any time by a Person, entity or group that held [REDACTED] or less immediately prior to such time of determination. Each Party undertakes to promptly notify the other in writing of an occurrence of any of the events specified in this Section 16.2(f).

16.3 Throughout the Term, either Party has the right to suspend performance of or terminate this Agreement immediately by giving written notice to the other Party in the event that it has reason to suspect or believe or in the event that:

- (a) the other Party has suffered a significant emergency or serious incident or accident or received a serious threat that relates to any of that Party's flights or to a Codeshared Flight or Codeshared Route; or
- (b) the other Party has received from any relevant Competent Authority notice that it has failed to comply with applicable safety or security requirements; or
- (c) the United States Department of Transportation (DOT), the United States Department of Defense (DOD) or the United States Department of Homeland Security (DHS), or the counterpart authorities in the Philippines, has ordered in writing or orally that the Marketing Carrier's Code be removed from Codeshared Flights or Codeshared Routes operated by the Operating Carrier for any reason whatsoever; or
- (d) the civil aviation authority of the Philippines or the United States, as applicable, does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the International Civil Aviation Organization (ICAO), which results in the Philippines receiving a rating of Category 2 from the Federal Aviation Administration (FAA), or the United States receiving an equivalent rating from counterpart authorities in the Philippines, respectively.

If a Party suspends this Agreement pursuant to this Section, as soon as the reason for the suspension no longer exists it shall notify the other Party and this Agreement will recommence within [REDACTED] after the date of notice under the same terms and conditions, or under amended terms and conditions in accordance with Section 30.1. A Party that suspends this Agreement pursuant to this Section may at any time during the suspension terminate this Agreement by giving notice in writing to the other Party. If this



Agreement is suspended or terminated pursuant to this Section 16.3, Sections 16.4 through 16.5 shall apply.

- 16.4 Subject to Section 16.5, in the event of termination of this Agreement the Marketing Carrier shall, in its sole discretion, unless termination is pursuant to Section 16.2(f) or Annex C, take all reasonable actions to confirm and preserve reservations on the Operating Carrier for passengers scheduled to be traveling on Marketing Carrier Tickets and, as applicable, endorse or otherwise modify or reissue such tickets to permit use on the Operating Carrier. The Operating Carrier shall accept passengers traveling on such tickets as if such reservations had been booked through the Operating Carrier using ordinary interline procedures but giving effect to the revenue settlement methodology provided for in Section 6 of this Agreement.
- 16.5 In the event that this Agreement is terminated by the Operating Carrier pursuant to Section 16.2(d) or 16.2(e), the Operating Carrier, in its sole discretion, may decline any or all passengers scheduled to be traveling on Marketing Carrier Tickets. The Marketing Carrier shall be solely responsible for transferring the reservations of such passengers to other carriers or making other alternative arrangements.

17. **INDEMNIFICATION**

- 17.1 Without prejudice to any other written agreement or arrangement of either Party to indemnify the other Party, the Party that is the Operating Carrier (or whose Authorized Affiliate or Authorized Wet Lessor is the Operating Carrier) shall indemnify, defend, and hold harmless the Marketing Carrier and its Affiliates and their respective directors, officers, employees and agents (each individually, or all collectively a, "**Marketing Carrier Indemnified Party**") from and against any and all Damages arising out of, caused by, or occurring in connection with (or alleged to arise out of, be caused by, or occurring in connection with) any of the following:
- (a) the death of or injury to or delay of persons, or delay or loss of or damage to property (including aircraft, equipment, baggage, mail or cargo) occurring while such persons or property are under the control or in the custody of, or being transported by, the Operating Carrier (including, for the avoidance of doubt, Damages arising out of the death of or injury to Codeshared Passengers traveling on Marketing Carrier Tickets irrespective of conditions or liability limits that apply or may purport to apply);
  - (b) the death of or injury to, or loss or damage to property of, third parties not carried on board the aircraft operated by the Operating Carrier but occurring in connection with such operations;
  - (c) negligent acts or omissions of the Operating Carrier related to its obligations under this Agreement, other than Damages to the extent addressed in Section 17.1(a) or (b) or Section 0(a) or (b);
  - (d) the Operating Carrier's breach of any of its representations or warranties set forth in Section 14 of this Agreement; or
  - (e) infringement of a third party's intellectual property or similar rights by the Operating Carrier's logos, trademarks, service marks or trade names.

PROVIDED THAT, the Operating Carrier shall not be required to indemnify any Marketing Carrier Indemnified Party for any liability arising from [REDACTED]. THE OPERATING CARRIER UNDERSTANDS AND ACKNOWLEDGES THAT UNDER THE CIRCUMSTANCES ADDRESSED BY SECTIONS 17.1(a) AND 17.1(b), IT WILL BE REQUIRED TO INDEMNIFY A MARKETING CARRIER INDEMNIFIED PARTY AGAINST DAMAGES ARISING FROM SUCH [REDACTED].

- 17.2 Subject to the indemnities provided in Section 17.1(a), and without prejudice to any other written agreement or arrangement of either Party to indemnify the other Party, the Party that is the Marketing Carrier (or whose Affiliate is the Marketing Carrier) shall indemnify, defend, and hold harmless the Operating Carrier and its Affiliates and their respective directors, officers, employees, and agents (each individually an, or collectively the, "Operating Carrier Indemnified Party") from and against any and all Damages arising out of, caused by, or occurring in connection with (or alleged to arise out of, be caused by, or occurring in connection with) any of the following:
- (a) the death of or injury to or delay of persons, or delay or loss of or damage to property (including aircraft, equipment, baggage, mail or cargo) occurring while such persons or property are under the control or in the custody of, or being transported by, the Operating Carrier, but only to the extent caused by [REDACTED];
  - (b) the death of or injury to, or loss or damage to property of, third parties not carried on board the aircraft operated by the Operating Carrier but occurring in connection with such operations, but only to the extent caused by [REDACTED];
  - (c) negligent acts or omissions of the Marketing Carrier that are related to its obligations under this Agreement, other than Damages to the extent addressed in Section 17.1(a) or (b) or Section 0(a) or (b);
  - (d) passenger claims based on the Marketing Carrier's failure to properly issue, deliver and complete transportation documentation in accordance with the provisions of the standard IATA or other applicable ticketing procedures, including, without limitation, the failure to put a proper notice of the limits of liability under the Warsaw Convention, as amended, or the Montreal Convention of 1999, as amended, on such documentation (it being understood that in ticketing Codeshared Passengers, the Marketing Carrier is entitled to apply the limits of liability provided for in its own Conditions of Carriage); provided, however, that the Marketing Carrier shall only be liable under this Section 0(d) for that portion of any Damages that is in excess of the Damages against which the Operating Carrier would have been required to indemnify the Marketing Carrier under Section 17.1(a) if the Marketing Carrier had properly complied with all IATA ticketing procedures;
  - (e) the Marketing Carrier's breach of its representations or warranties set forth in Section 14 of this Agreement; or

- (f) infringement of a third party's intellectual property or similar rights by the Marketing Carrier's logos, trademarks, service marks or trade names.

- 17.3 A Party (the "**Indemnified Party**") that believes it is entitled to indemnification from the other Party (the "**Indemnifying Party**") pursuant to the terms of this Agreement with respect to a claim for Damages (i.e., a third party claim) shall provide the Indemnifying Party with written notice (an "**Indemnification Notice**") of such claim (provided, however, that the failure to give such notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that such failure is materially prejudicial to the Indemnifying Party), and the Indemnifying Party shall be obligated and entitled, at its own cost and expense and by its own legal advisors, to control the defense of or to settle any such third party claim. The Indemnifying Party shall have the right to elect to settle any such claim for monetary Damages only, subject to the consent of the Indemnified Party; provided, however, if the Indemnified Party fails to give such consent to a settlement that has been agreed upon by the Indemnifying Party and the claimant in question within [REDACTED] of being requested to do so, the Indemnified Party shall assume the defense of such claim or demand and regardless of the outcome of such matter, the Indemnifying Party's liability hereunder shall be limited to the amount of any such proposed settlement. If the Indemnifying Party fails to take any action against the third party claim that is the subject of an Indemnification Notice within [REDACTED] of receiving such Indemnification Notice, or otherwise contests its obligation to indemnify the Indemnified Party in connection therewith, the Indemnified Party may, upon providing prior written notice to, but without the further consent of, the Indemnifying Party settle or defend against such third party claim for the account, and at the expense, of the Indemnifying Party. Except as set forth in this Section 17.3, the Indemnified Party shall not enter into any settlement or other compromise or consent to a judgment with respect to a third party claim to which the Indemnifying Party has an indemnity obligation without the prior written consent of the Indemnifying Party.
- 17.4 Each Indemnified Party shall have the right, but not the duty, to participate in the defense of any claim with attorneys of its own choosing and at its own cost, without relieving the Indemnifying Party of any obligations hereunder. In addition, even if the Indemnifying Party assumes the defense of a claim, the Indemnified Party shall have the right to assume control of the defense of any claim from the Indemnifying Party at any time, and to elect to settle or defend against such claim; provided, however, the Indemnifying Party shall have no indemnification obligations with respect to such claim except for the costs and expenses of the Indemnified Party (other than attorneys' fees incurred in participating in the defense of such claim) incurred prior to the assumption of the defense of the claim by the Indemnified Party.
- 17.5 Each Party further agrees to indemnify, defend and hold harmless the other Party from and against any and all Taxes (as defined in Annex A), or Assessments (as defined in Section 19.6), as the case may be, levied upon or advanced by the Indemnified Party, but that ultimately the Indemnifying Party would be responsible for paying, which resulted from any transaction or activity contemplated by this Agreement.
- 17.6 The rights and obligations of the Parties under this Section 17 shall survive the Termination Date or expiration of this Agreement.

18. **INSURANCE**

18.1 The Operating Carrier shall procure and maintain for the benefit of the Marketing Carrier during the term of this Agreement with insurance carriers of known financial responsibility, insurance of the type and in the amounts listed below:

- (a) Third Party Legal Liability in respect of all operations, including but not limited to aircraft (owned and non-owned) liability (including risks hijacking and allied perils), passenger and crew baggage and personal effects, funeral and repatriation expenses (including crew), all reasonable expenses arising out of the Family Assistance Act (United States) and/or similar regulations applying elsewhere in the world, cargo, mail, hangarkeepers, comprehensive general liability, or its equivalent including premises and products liability, liquor law liability. The insurance policy shall not contain any exclusions for liability assumed by the Operating Carrier under this Agreement. This insurance must be primary without right of contribution from any insurance carried by the Marketing Carrier to the extent of the indemnity specified in Section 17.1, and shall (i) name the Marketing Carrier and the Marketing Carrier Indemnified Parties as additional insureds (the "Additional Insured(s)") to the extent of the protections afforded the Marketing Carrier under the indemnity specified in Section 17.1 (ii) contain a severability of interest clause to the extent that this insurance shall operate in all respects as if a separate policy has been issued covering each party insured hereunder but, notwithstanding the foregoing, the total liability of insurers in respect of any and all insureds shall not exceed the limits of liability stated in the policy(ies); (iii) contain a breach of warranty clause in favor of the Marketing Carrier to the extent that coverage afforded to each Additional Insured by this insurance shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other person or party which results in a breach of any term, condition or warranty of the policy(ies) provided that the Additional Insured so protected has not caused, contributed to or knowingly condoned the said act or omission; ; (iv) provide that the Additional Insured(s) shall have no responsibility for premium and insurers shall waive any right of set off or counterclaim against the Additional Insured(s);, and (v) provide that, except in respect of any provision for cancellation or automatic termination specified in the policy(ies) or any endorsement thereof, the coverage afforded by this insurance may only be cancelled or materially altered in a manner adverse to the Additional Insured(s) by the giving of not less than [REDACTED] or such lesser period as may be available in respect of war and allied perils) notice in writing. Notice shall be deemed to commence from the date such notice is given by the insurers. Such notice will not, however, be given at normal expiry date of the policy(ies) or any endorsement.
- (b) The Operating Carrier shall maintain a combined single limit of liability of not less than [REDACTED] per any one occurrence for each aircraft, including bodily injury, death, personal injury, property damage, passenger (including Codeshared Passengers and other revenue and non-revenue passengers) legal liability and war and allied perils combined, over all coverages and in the aggregate as applicable, but (i) personal injury limited to [REDACTED] per offense and in the annual aggregate except with respect to passengers (including Codeshared Passengers and other revenue and non-revenue passengers), and (ii) war and allied perils may be subject to an annual aggregate limit.

- (c) Hull all risk insurance, including war risk, and such policy shall include a waiver of subrogation in favor of the Additional Insured(s) but only to the extent of the indemnity or hold harmless given by the Operating Carrier to the Additional Insured(s) under this Agreement.
  - (d) Worker's compensation and employer's liability insurance, or such other similar or equivalent insurance carried outside of the United States, in accordance with statutory limits.
- 18.2 The Operating Carrier shall provide the Marketing Carrier with certificates of insurance evidencing such coverage no less than [REDACTED] prior to the commencement of the first Codeshared Flight, and thereafter within [REDACTED] of the date of any renewal of such coverage.

19. **TAXES**

- 19.1 Subject to Section 19.4, each Party shall be responsible for any net or gross income or franchise taxes (or taxes of a similar nature) on the revenues or income or any measure thereof which is attributable to it in connection with the sale of air transportation pursuant to this Agreement.
- 19.2 The Party that acts as the Ticketing Carrier in respect of any particular transaction shall collect, except as otherwise prohibited by law, all Ticket Taxes relating to tickets sold or travel documents issued by it with respect to air transport pursuant to this Agreement. The Parties hereby agree as follows:
- (a) The Ticketing Carrier shall collect, report and remit to the taxation authorities any non-interlineable Ticket Taxes levied in connection with sales of the Codeshared Flights.
  - (b) The Ticketing Carrier shall collect any interlineable Ticket Taxes levied in connection with the sales of the Codeshared Flights. If the Ticketing Carrier is American, Philippine Airlines shall report for any interlineable Ticket Taxes levied in connection with the sales of the Codeshared Flights to American Airlines and bill such interlineable Ticket Taxes in accordance with the Interline Traffic Agreement. If the Ticketing Carrier is Philippine Airlines, American shall report for any interlineable Ticket Taxes levied in connection with the sales of the Codeshared Flights to Philippine Airlines and bill such interlineable Ticket Taxes in accordance with the Interline Traffic Agreement. If the Ticketing Carrier is a third party, the Operating Carrier shall report any interlineable Ticket Taxes levied in connection with the sales of the Codeshared Flights to the Ticketing Carrier and bill such interlineable Ticket Taxes in accordance with the interline traffic agreement, or as may be otherwise agreed, between Philippine Airlines and the Ticketing Carrier. The Operating Carrier shall remit to taxation authorities all such interlineable Ticket Taxes.
  - (c) The Operating Carrier may bill the Ticketing Carrier for any Ticket Taxes due or payable on or measured by passenger enplanement and payable or remittable by the Operating Carrier or the Marketing Carrier in accordance with industry guidelines outlined in the IATA Revenue Accounting Manual (IATA-RAM).



- (d) If the Ticketing Carrier is a third party, the Marketing Carrier shall use commercially reasonable efforts to cause such third party to implement the foregoing provisions.
- 19.3 Notwithstanding the provisions of Section 19.2, if the Ticketing Carrier is prohibited by law from collecting certain Ticket Taxes in the country where tickets are sold or where travel documents are issued, then the Ticketing Carrier is relieved only from collecting such Ticket Taxes so prohibited by law and (i) if the Marketing Carrier is the Ticketing Carrier it shall notify the Operating Carrier, and (ii) if a third party is the Ticketing Carrier the Marketing Carrier shall cause the Ticketing Carrier to notify the Operating Carrier, within [REDACTED] of the enactment of such laws which Ticket Taxes it is prohibited from collecting and render reasonable assistance to the Operating Carrier so that procedures can be implemented to collect such Ticket Taxes from the passenger.
- 19.4 Both Parties acknowledge that the tax laws of the countries in which they may operate in connection with the Codeshared Flights may require withholding of Taxes on certain of the payments that either of the Parties or their agents (the "Payor") may be required to pay to the other Party (the "Payee"), under this Agreement. It is agreed that payments to the Payee shall be exclusive of such withholding, provided however, that the Payor shall inform the Payee in writing with at least [REDACTED] advance notice of its intent to withhold the Taxes and the legal basis for such withholding. The Payor shall inform the Payee:
- (a) within [REDACTED] of receipt by the Payor of any directives that may be given to the Payor by such taxation authority; and
- (b) within [REDACTED] of payment by the Payor to the relevant taxation authority the amounts withheld by Payor.
- 19.5 For U.S. income tax purposes, Philippine Airlines shall annually and timely furnish American, a valid, completed and duly executed U.S. Federal Form W-8BEN-E (Ownership, Exemption, or Reduced Rate Certificate) or such other forms as the U.S. Internal Revenue Service may require from time to time, so that American may report any relevant transactions arising under this Agreement and, if applicable, substantiate an exemption from any obligation on American's part with respect to any income tax withholding or reporting obligations on payments made to Philippine Airlines. In the event the Payor is required to withhold taxes under the procedures of Section 19.4, the Payor shall provide to the Payee within [REDACTED] of such withholding a tax receipt and copies of any support for the payment as may be necessary to support a claim by the Payee of a foreign tax credit under Applicable Laws.
- 19.6 If either Party receives notice from any taxation authority with respect to any assessment or potential assessment or imposition of any Tax (collectively, an "Assessment") relating to this Agreement, that the other Party may be responsible for paying, directly or indirectly, the Party so notified shall inform the other Party in writing within [REDACTED] of receipt of such notice. If the Party receiving such notice from a taxation authority is or will be required to pay any Assessment for which the other Party is ultimately responsible, it shall be entitled to be indemnified against such Assessment in accordance with Section 17.5. The Indemnifying Party shall have the option to defend or contest such Assessment in accordance with the procedures set forth in Section 17.



20. **JOINT MANAGEMENT COMMITTEE**

- 20.1 Coincident with the execution of this Agreement, American and Philippine Airlines will create a joint management committee (the "**Committee**"). American and Philippine Airlines will each designate [REDACTED] management representatives to the Committee and each will have the right to replace its management designees at any time upon prior written notice to the other Party. The Committee will endeavor to meet annually (in person or by telephone) at a mutually agreed time and location and will meet at such additional times as it determines appropriate for the performance of its responsibilities or as reasonably requested by either Party. Each meeting will be conducted in accordance with an agenda to be determined as described below. Either Party may place an item on the agenda of any meeting of the Committee.
- 20.2 The Committee will oversee the management of the transactions and relationships contemplated in this Agreement, and, in that capacity, will review the planning and implementation of the cooperative services of American and Philippine Airlines, and their respective airline Affiliates. The Committee will, as part of its responsibilities, monitor customer service quality, system development, performance of Codeshared Flights, marketing approach and techniques, shared use of facilities, frequent flyer arrangements, and all other aspects of the implementation, operation, and compliance with this Agreement, the Frequent Flyer Participating Carrier Agreements (if any), and any other marketing agreements between the Parties (e.g., cargo, alliance), if any. The Committee will consider ways to improve the performance and efficiency of the cooperative services to reduce costs and to increase the benefits afforded to American and Philippine Airlines by the relationship. The Committee will also actively consider, and endeavor to develop, opportunities for expanding the scope of the relationship between the Parties and their respective Affiliates. Areas for further cooperation may include, but are not limited to, ground handling, joint purchasing of fuel and other items, facilities consolidation, maintenance, insurance, and the provision of management services and systems by American and/or Philippine Airlines and their respective Affiliates. The Committee will resolve any differences between the Parties on a fair and amicable basis. In performing its responsibilities, the Committee will be mindful of, and will comply with, all laws and regulations applicable to American and Philippine Airlines, including, without limitation, laws and regulations governing competition between American and Philippine Airlines.

21. **FORCE MAJEURE**

Except with respect to the performance of payment, confidentiality, and indemnity obligations, which shall be unconditional under this Agreement, neither Party shall be liable for delays in or failure to perform under this Agreement to the extent that such delay or failure (an "**Excusable Delay**") (a) is caused by any act of God, war, act of terrorism, natural disaster, strike, lockout, labor dispute, work stoppage, fire, serious accident, epidemic or quarantine restriction, act of government or any other cause, whether similar or dissimilar, beyond the control of that Party; and (b) is not the result of that Party's lack of reasonable diligence. If an Excusable Delay continues for [REDACTED] or longer, the non-delayed Party shall have the right, at its option, to terminate this Agreement by giving the delayed Party at least [REDACTED] prior written notice.

22. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 22.1 This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of New York (without regard to its conflict of laws principles) including all matters of construction, validity and performance.
- 22.2 All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”) by a panel of arbitrators appointed in accordance with such Rules. The arbitration panel shall consist of three (3) arbitrators who are knowledgeable about the legal, marketing, and other business aspects of the airline industry, and fluent in the English language. The arbitration may be conducted by only one (1) arbitrator if Philippine Airlines and American agree in advance of the arbitration on a mutually acceptable individual. The arbitration proceedings shall take place in New York, New York, and shall be conducted in the English language.
- 22.3 Each Party irrevocably submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any State Court sitting in New York, for purposes of enforcing any arbitral award or for other legal proceedings arising out of this Agreement or any transactions contemplated in this Agreement. Each Party, to the fullest extent it may effectively do so under substantive governing law applicable to this Agreement, also irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court and any objection that it may have as to venue or inconvenient forum in respect of claims or actions brought in such court.
- 22.4 Each Party irrevocably designates, appoints, authorizes and empowers as its agent for service of process the Secretary of State of the State of New York or C.T. Corporation System at its offices presently located at 111 Eighth Avenue, New York, NY 10011, to receive and acknowledge on behalf of such Party any process, notices, or other documents that may be served in any suit, action, or proceeding of the nature referred to in this Section 22 in any State or Federal court sitting in New York. Each Party has empowered the Secretary of State of the State of New York or C.T. Corporation System as its agent for service of process by the granting of power of attorney. Such designation and appointment will continue unless and until notice is given. Nothing in this Section 22 affects the right of any Party to serve process in any manner permitted by law, or limits any right that any Party may have to bring proceedings against the other Party in the courts of any jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.
- 22.5 Philippine Airlines and American each acknowledge that the transactions contemplated in this Agreement involve commercial activity carried on in the United States of America. To the extent that either Party or any of its property is or becomes entitled at any time to any immunity on the grounds of sovereignty or otherwise, including under the Foreign Sovereign Immunities Act of 1976 of the United States of America, from any legal action, suit, arbitration proceeding or other proceeding, from set-off or counterclaim, from the jurisdiction of any court of competent jurisdiction, from service of process, from attachment prior to judgment or after judgment, from attachment in aid of execution or levy or execution resulting from a decree or judgment, from judgment or from jurisdiction, that Party for itself and its property does hereby irrevocably and unconditionally waive all rights to, and agrees not to plead or claim any such immunity with respect to its obligations,



liabilities or any other matter arising out of or in connection with this Agreement or its subject matter. The foregoing waiver and agreement is not subject to withdrawal in any jurisdiction.

23. **DATA PROTECTION, PRIVACY AND COVENANT TO COMPLY WITH ALL LAWS**

- 23.1 The Parties shall comply with the data privacy supplement attached as Annex G (the “**Data Privacy Supplement**”). The obligations under the Data Privacy Supplement shall survive termination or expiration of the Agreement. Notwithstanding anything to the contrary, in the event of any conflict between the Data Privacy Supplement and the terms of this Agreement (including any other schedules or Annexes hereto and any other documents incorporated in this Agreement by reference), the Data Privacy Supplement shall control.
- 23.2 In performing its obligations under this Agreement, each Party shall, at its own cost and expense, fully comply with, and have all licenses under, all applicable federal, state, provincial and local laws, rules and regulations of the United States, the Philippines and all third countries including rules and regulations promulgated by the U.S. National Transportation Safety Board, U.S. Department of Transportation, U.S. Federal Aviation Administration, the U.S. Department of Defense, the U.S. Department of Homeland Security and the counterpart agencies in the Philippines. Each Party further agrees to participate in (i) the Advance Passenger Information System (“**APIS**”) program whereby the Operating Carrier will, upon request, supply U.S. Customs and Border Protection (“**CBP**”) with the required passenger manifest data from its flight(s) inbound to and outbound from the United States at the time of departure; (ii) the U.S. Department of Homeland Security (“**DHS**”) Electronic System for Travel Authorization (“**ESTA**”), and (iii) the DHS Secure Flight program.
- 23.3 If either Party has notice that a provision of this Agreement is contrary to any Applicable Laws or governmental regulations, that Party shall immediately notify the other Party in writing, such notice to include a description of the perceived violation of regulation and supporting written materials that facilitate the other Party’s investigation of such perceived violation.

24. **PUBLICITY**

Except as required by Applicable Law, neither Party may issue any written press release concerning this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

25. **CONFIDENTIALITY**

- 25.1 Each Party shall, and shall ensure that its directors, officers, employees, Affiliates, and professional advisors (collectively, the “**Representatives**”), at all times, maintain strict confidence and secrecy in respect of all Confidential Information of the other Party (including its Affiliates) received directly or indirectly as a result of this Agreement. Such Confidential Information shall not be disclosed to any third parties (other than the Representatives of the receiving party) except as may be required to obtain any Government Approvals or as otherwise provided in this Section 25. Any such unauthorized disclosure by either Party shall permit the other Party to, upon written notification, terminate this Agreement with immediate effect, without limiting its right to recover any damages that may result from such unauthorized disclosure.

- 25.2 Except as may be required by Applicable Law (including, without limitation, requirement by oral questions, interrogatories, subpoenas, civil investigative demands or similar processes), the Party receiving Confidential Information of the other Party agrees to (i) use such information only for the purposes of this Agreement; and (ii) maintain such information in secrecy at all times, using the same degree of care with respect to such Confidential Information as it uses in protecting its own Confidential Information of similar value and importance, unless consented to by the other Party or otherwise permitted under this Section 25.
- 25.3 If a Party (the "**Disclosing Party**") is requested to disclose any Confidential Information of the other Party (the "**Affected Party**") under the terms of a subpoena or order issued by a court or an order or request issued by a governmental authority (each a "**Request**"), it shall (a) to the extent legally permitted, notify the Affected Party immediately of the existence, terms, and circumstances surrounding such Request, (b) to the extent legally permitted, consult with the Affected Party on the advisability of taking legally available steps to resist or narrow such Request and provide the Affected Party, reasonable time and assistance, as applicable under the terms of and circumstances surrounding such Request, to take appropriate action to resist or narrow such Request, and (c) furnish only such portion of the Confidential Information as it is required to disclose, as reasonably determined by the Disclosing Party's legal counsel, to comply with such Request and use commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the disclosed Confidential Information..
- 25.4 Each Party agrees to transmit Confidential Information only to such of its Representatives as required for the purpose of implementing and administering this Agreement, and shall inform such Representatives of the confidential nature of the Confidential Information and instruct such Representatives to treat such Confidential Information in a manner consistent with this Section 25.
- 25.5 Within [REDACTED] after the termination of this Agreement, each Party shall, either deliver to the other Party or destroy all copies of the other Party's Confidential Information in its possession or the possession of any of its Representatives (including, without limitation, any reports, memoranda or other materials prepared by such Party or at its direction) and purge all copies encoded or stored on magnetic or other electronic media or processors, unless and only to the extent that the Confidential Information is necessary for the continued administration and operation of such Party's programs or is reasonably necessary in connection with the resolution of any dispute between the Parties.
- 25.6 Each Party acknowledges and agrees that in the event of any breach of this Section 25, the Affected Party shall be irreparably and immediately harmed and could not be made whole by monetary Damages. Accordingly, it is agreed that, in addition to any other remedy at law or in equity, the Affected Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual Damages) to prevent breaches or threatened breaches of this Section 25 and/or to compel specific performance of this Section 25.
- 25.7 The confidentiality obligations of the Parties under this Section 25 shall survive the Termination Date or expiration of this Agreement for a period of [REDACTED].

26. **ASSIGNMENT**

Neither Party may assign or otherwise convey any of its rights under this Agreement, or delegate or subcontract any of its duties hereunder, without the prior written consent of the other Party; provided however, that each of American and Philippine Airlines may assign, subcontract or delegate any of its rights, duties or obligations under this Agreement to any of its Affiliates provided that such assignment and/or delegation shall not relieve American or Philippine Airlines of any of its obligations under this Agreement.

27. **SEVERABILITY**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, such provision shall be severed from this Agreement in the jurisdiction in question and shall not affect the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or the enforceability of such provision under the law of any other jurisdiction; unless, in the reasonable opinion of either Party, any such severance affects the commercial basis of this Agreement, in which case the Party shall so inform the other Party and the Parties shall negotiate in good faith to agree upon modification of this Agreement so as to maintain the balance of the commercial interests of the Parties. If, however, such negotiations are not successfully concluded within [REDACTED] from the date a Party has informed the other that the commercial basis has been affected, either Party may terminate this Agreement by giving at least [REDACTED] prior written notice to the other Party.

28. **NON-EXCLUSIVITY**

28.1 This Agreement is non-exclusive and does not preclude either Party from entering into or maintaining marketing relationships, including codesharing, with other airlines, except that:

- (a) During the term of this Agreement, Philippine Airlines shall not, and shall cause its Affiliates not to:
  - (i) place the Philippine Airlines Code or any Affiliate's Code, on any flight operated by any air carrier domiciled in the United States, other than American and its Affiliates, without American's prior written consent; or
  - (ii) permit any air carrier domiciled in the United States, other than American and its Affiliates, to place its Code on any flight operated by Philippine Airlines or any Affiliate of Philippine Airlines, without American's prior written consent; or
  - (iii) place the Philippine Airlines Code or any Affiliate's Code, on any flight to, from, via, or within the United States, other than flights operated by Philippine Airlines and its Affiliates and American and its Affiliates, without American's prior written consent; or
  - (iv) permit any air carrier, other than American and its Affiliates, to place its Code on any flights to, from, via, or within the United States, operated by Philippine Airlines or any Affiliate of Philippine Airlines, without American's prior written consent.

- (b) During the term of this Agreement, American shall not, and shall cause its Affiliates not to:
- (i) place the AA Code or any Affiliate's Code on any flight operated by any air carrier domiciled in the Philippines other than Philippine Airlines and its Affiliates, without Philippine Airlines' prior written consent; or
  - (ii) permit any air carrier domiciled in the Philippines, other than Philippine Airlines and its Affiliates, to place its Code on any flight operated by American or any Affiliate of American, without Philippine Airlines' prior written consent; or
  - (iii) place the AA Code or any Affiliate's Code, on any flight to, from, via, or within the Philippines, other than flights operated by American and its Affiliates and Philippine Airlines and its Affiliates, without Philippine Airlines' prior written consent; or
  - (iv) permit any air carrier, other than Philippine Airlines and its Affiliates, to place its Code on any flights to, from, via, or within the Philippines operated by American or any Affiliate of American, without Philippine Airlines' prior written consent.

28.2 The foregoing Section 28.1 shall not apply to:

- (a) codeshared arrangements currently in force between each of Philippine Airlines and American and third-parties, and any future renewals or modifications of such commitments;
- (b) codeshared arrangements with air carriers that provide only air cargo services (i.e., no commercial passenger air transport services); or
- (c) codeshared arrangements with any member of the oneworld™ Alliance; provided that, for clarification purposes only, oneworld connect carriers are not considered members of the oneworld™ Alliance for purposes of this Agreement.

## 29. **FURTHER ASSURANCES**

29.1 Each Party shall perform such further acts and execute and deliver such further instruments and documents at such Party's cost and expense as may be required by Applicable Law, rules or regulations or as may be reasonably requested by the other to carry out and effectuate the purposes of this Agreement.

29.2 If and to the extent the transactions or activities contemplated by this Agreement require the cooperation or participation of an Affiliate or an Authorized Wet Lessor that is not a party hereto, then its Parent Carrier shall cause such Affiliate or Authorized Wet Lessor to cooperate or participate in such transaction or activity. Without limiting the generality of the foregoing, if such Affiliate or Authorized Wet Lessor operates as an Operating Carrier in connection with this Agreement and is not a party to a separate codesharing agreement or addendum hereto with respect to such operations, its Parent Carrier shall cause it to comply with all obligations imposed on an Operating Carrier hereunder as if such Affiliate or Authorized Wet Lessor were a party hereto. The Parent Carrier shall be jointly and

severally obligated and liable with such Affiliate or Authorized Wet Lessor for all such obligations, including, without limitation, the indemnity and insurance requirements of this Agreement. In addition, the Parent Carrier shall cause such Affiliate or Authorized Wet Lessor to perform such acts and execute and deliver such further instruments and documents as may reasonably be required by the other Party to provide for such cooperation and participation, including, without limitation, execution of an addendum providing for such Affiliate or Authorized Wet Lessor to become a party to this Agreement.

**30. MISCELLANEOUS**

- 30.1 This Agreement contains the entire agreement between the Parties relating to its subject matter, and supersedes any prior understandings or agreements between the Parties regarding the same subject matter. This Agreement may not be amended or modified except in writing signed by a duly authorized Representative of each Party.
- 30.2 The relationship of the Parties hereunder shall be that of independent contractors. Neither Party is intended to have, and neither of them shall represent to any other Person that it has, any power, right or authority to bind the other, or to assume, or create, any obligation or responsibility, express or implied, on behalf of the other, except as expressly required by this Agreement or as otherwise permitted in writing. Nothing in this Agreement shall be construed to create between the Parties and/or the Parties' Representatives any partnership, joint venture, employment relationship, franchise or agency (except that the Operating Carrier shall have supervisory control over all passengers during any Codeshared Flight, including any employees, agents or contractors of the Marketing Carrier who are on board any such Codeshared Flight).
- 30.3 In the event that there occurs a substantial change in market conditions in general or in the condition of either Party, which change is not substantially the result of an act or omission of the Party requesting a change or amendment to this Agreement, and which change has a material adverse effect on either Party to this Agreement, then American or Philippine Airlines may propose a review of or amendment to this Agreement to limit or expand any of the terms, to extend the relationship to additional activities or city-pair destinations or otherwise to modify in any way the transactions or relationships contemplated in this Agreement. However, neither American nor Philippine Airlines will have any obligation, for any reason, to effect such an amendment.
- 30.4 All rights, remedies and obligations of the Parties hereto shall accrue and apply solely to the Parties hereto and their permitted successors and assigns; there is no intent to benefit any third-parties, including the creditors of either Party.
- 30.5 This Agreement may be executed and delivered by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all of which taken together shall constitute one and the same instrument.
- 30.6 No failure to exercise and no delay in exercising, on the part of any Party, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. The failure of any Party to insist upon a strict performance of any of the terms or provisions of this

Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by any Party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such Party.

- 30.7 This Agreement is the product of negotiations between Philippine Airlines and American, and shall be construed as if jointly prepared and drafted by them, and no provision hereof shall be construed for or against any Party by reason of ambiguity in language, rules of construction against the drafting Party, or similar doctrine.
- 30.8 Although translations of this Agreement may be made into any other language for the convenience of the Parties, the English version will govern for all purposes of the interpretation and performance of this Agreement.
- 30.9 Neither Party shall be liable for any exemplary, punitive, special or consequential Damages, including lost revenues, lost profits or lost prospective economic advantage, arising from any performance or failure to perform under this Agreement, even if such Party knew or should have known of the possibility thereof, and each Party hereby releases and waives any claims against the other Party regarding such Damages. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AGREE THE FOREGOING SHALL NOT LIMIT A PARTY'S OBLIGATION TO INDEMNIFY THE OTHER IN ACCORDANCE WITH SECTION 17 FOR DAMAGES ARISING OUT OF OR RELATING TO A CLAIM, SUIT OR CAUSE OF ACTION BY A THIRD PARTY.

### 31. NOTICES

Unless otherwise expressly required in this Agreement or the Procedures Manual, all notices, reports, invoices and other communications required or permitted to be given to or made upon a Party to this Agreement shall be in writing, shall be addressed as provided below and shall be considered as properly given and received: (i) when delivered, if delivered in person (and a signed acknowledgment of receipt is obtained); (ii) [REDACTED] after dispatch, if dispatched by a recognized express delivery service that provides signed acknowledgments of receipt; or (iii) [REDACTED] after deposit in the applicable postal service delivery system. For the purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that either Party shall have the right to change its address for notice to any other location by giving at least [REDACTED] prior written notice to the other Party in the manner set forth above.

If to American Airlines, Inc.:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

with a copy to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If to Philippine Airlines, Inc.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers, as of the Effective Date.

**PHILIPPINE AIRLINES, INC.**

**AMERICAN AIRLINES, INC.**

**Attachments:**

- Annex A – Definitions**
- Annex B – Codeshared Routes**
- Annex C – Minimum Standards of Ground and In-Flight Services**
- Annex D – Reserved**
- Annex E – Financial Settlement**
- Annex F – Governmental Approvals**
- Annex G – Data Privacy Supplement**



## ANNEX A DEFINITIONS

**"Additional Insured(s)"** has the meaning assigned to such term in Section 18.1(a).

**"Affected Party"** has the meaning assigned to such term in Section 25.3.

**"Affiliate"** means, with respect to any Person or entity, any other Person or entity directly or indirectly controlling, controlled by, or under common control with, such Person or entity. For purposes of this definition, "control" (including "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person or entity, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** has the meaning assigned in the preamble to this Agreement.

**"Airline Guides"** means the printed and electronic data versions of the "Official Airline Guide" and the "ABC World Airlines Guide," and their respective successors.

**"American"** has the meaning assigned in the preamble to this Agreement.

**"APIS"** has the meaning assigned to such term in Section 23.2.

**"Applicable Law"** means all applicable laws of any jurisdiction including securities laws, tax laws, tariff and trade laws, ordinances, judgments, decrees, injunctions, writs, and orders or like actions of any Competent Authority and the rules, regulations, orders or like actions of any Competent Authority and the interpretations, licenses, and permits of any Competent Authority.

**"Assessment"** has the meaning assigned to such term in Section 19.6.

**"ATPCO"** means the Airline Tariff Publishing Company.

**"Authorized Affiliate"** means (a) with respect to American, (i) Envoy Air Inc. (f/k/a American Eagle Airlines, Inc.), Piedmont Airlines, Inc., and PSA Airlines, Inc., to the extent each of them operates flights with American's Code under the "American Eagle" brand and (ii) any other carrier to the extent it operates flights with American's Code under the name "American Eagle"; and (b) with respect to Philippine Airlines, Air Philippines Corporation doing business as PAL express.

**"Authorized Wet Lessor"** has the meaning assigned to such term in Section 2.9.

**"Authorized Wet Lessor Reviews"** shall have the meaning assigned to such term in Section 2.9.

**"Business Day"** means any day other than a Saturday, Sunday or other day in which banking institutions in New York, New York, USA, or Manila, Philippines, are required by law, regulation or executive order to be closed.

**"Carrier Code Box"** means (i) for paper tickets, the field containing the two character airline designator code as defined in IATA Resolution 727, or (ii) for electronic (or e-) tickets the three alphanumeric characters contained in the "Sold Airline Designator (Marketing Carrier)" field as defined in IATA Resolution 722f.

**"CBP"** has the meaning assigned to such term in Section 23.2.

**"Code"** means the two (2) character identifier assigned to a carrier by IATA for the purpose of exchanging interline carrier messages in accordance with AIRIMP procedures.

**"Codeshare Commission"** has the meaning assigned to such term in Section 6.2.

**"Codeshared Flight"** means a flight on which both Parties have placed their respective Codes, as defined in Section 2.1 and Annex B.

**"Codeshared Routes" or "Routes"** means the city-pair markets set out in Annex B.

**"Codeshared Passenger"** means a passenger traveling on a Marketing Carrier Flight Coupon.

**"Committee"** has the meaning assigned to such term in Section 20.1.

**"Competent Authorities"** means any supranational, national, federal, state, county, local, regulatory or municipal government body, bureau, commission, board, board of arbitration, instrumentality, authority, agency, court, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) having jurisdiction over this Agreement or either Party.

**"Conditions of Carriage"** means those conditions of contract tariffs and rules of carriage of a Party that govern the transport of passengers traveling on tickets showing such Party's Code in the Carrier Code Box of the flight coupon.

**"Confidential Information"** means (a) all confidential or proprietary information of a Party, including, without limitation, trade secrets, information concerning past, present and future research, development, business activities and affairs, finances, properties, methods of operation, processes and systems, customer lists, customer information (such as passenger name record or "PNR" data) and computer procedures and access codes; (b) the terms and conditions of this Agreement and any reports, invoices or other communications between the Parties given in connection with the negotiation or performance of this Agreement; and (c) excludes (i) information already in a Party's possession prior to its disclosure by the other Party; (ii) information obtained from a third Person or entity that is not prohibited from transmitting such information to the receiving Party as a result of a contractual, legal or fiduciary obligation to the Party whose information is being disclosed; (iii) information that is or becomes generally available to the public, other than as a result of disclosure by a Party in violation of this Agreement; or (iv) information that has been or is independently acquired or developed by a Party, or its Affiliate, without violating any of its obligations under this Agreement.

**"CRS"** means a computerized reservations system owned or operated by any entity, including either Party to this Agreement, that contains information about commercial airline schedules, fares, cargo rates, passenger and cargo tariff rules and flight availability that is made available to travel agents, cargo agents and other non-airline entities to facilitate their ability to make reservations and issue tickets and air waybills.

**"Damages"** means all third party claims, suits, causes of action, penalties, liabilities, judgments, demands, recoveries, awards, settlements, penalties, fines, losses and expenses of any nature or kind whatsoever (including, without limitation, internal expenses of the Indemnified Party, such as employee salaries and the costs of cooperating in the investigation, preparation or defense of claims) under the laws of any jurisdiction (whether arising in tort, contract, under the Warsaw Convention, as amended, or the Montreal Convention of 1999, as amended, and related instruments or otherwise), including reasonable costs and expenses of investigating, preparing or defending any claim, suit, action or proceeding (including post judgment and appellate proceedings or proceedings that are incidental to the successful establishment of a

right of indemnification), such as reasonable attorneys' fees and fees for expert witnesses, consultants and litigation support services.

**"Data Privacy Supplement"** has the meaning assigned to such term in Section 23.1.

**"DHS"** has the meaning assigned to such term in Section 23.2.

**"Disclosing Party"** has the meaning assigned to such term in Section 25.3.

**"Effective Date"** has the meaning assigned to such term in Section 16.1.

**"ESTA"** has the meaning assigned to such term in Section 23.2.

**"Excusable Delay"** has the meaning assigned to such term in Section 21.

**"Frequent Flyer Participating Carrier Agreements"** means the agreements, from time to time, if any, between the Parties relating to the participation of one Party in the other Party's frequent flyer program.

**"Governmental Approvals"** means any authorizations, licenses, certificates, exemptions, designations, or other approvals of Competent Authorities that are reasonably required (in the opinion of either Party) for the operation of the Codeshared Flights.

**"IATA"** means the International Air Transport Association.

**"IATA Clearing House"** means the clearing house established by IATA to administer and implement revenue settlement by reference to the Revenue Accounting Manual published by IATA.

**"IATA PMP"** has the meaning assigned to such term in Section 6.2(a).

**"Implementation Date"** [means the date of the first codeshare service operated under this Agreement].

**"Inadmissible Passengers"** has the meaning defined in IATA Resolution 701, as modified, supplemented or amended from time to time.

**"Indemnification Notice"** has the meaning assigned to such term in Section 17.3.

**"Indemnified Party"** has the meaning assigned to such term in Section 17.3.

**"Indemnifying Party"** has the meaning assigned to such term in Section 17.3.

**"Interactive Availability"**, also known as **"Seamless Availability"** or **"Cascading Availability"**, means the transmission of POS data access to partner's availability via EDIFACT messaging, allowing the Marketing Carrier to query in real time inventory from the Operating Carrier.

**"Interactive Sell"** also known as **"Seamless Sell"** or **"Cascading Sell"**, means the transmission of POS data access to partner's real-time, last seat availability via EDIFACT messaging, allowing the Marketing Carrier to decrease inventory from the Operating Carrier at time of sell, protecting against codeshare oversales.

**"Interline Service Charge"** means the payment by the carrier lifting the ticket to the Ticketing Carrier, according to the industry program for compensation for the Ticketing Carrier's commission sales costs

currently set forth in IATA Passenger Services Conference Resolutions 780b and 780d or as agreed between the respective carriers.

**“Interline Traffic Agreement” or “TTA”** means that certain Interline Traffic Agreement entered into by the Parties, as may be amended, supplemented or modified from time to time.

**“IOSA”** has the meaning assigned to such term in Section 3.1(c).

**“Licensed Trademark”** has the meaning assigned to such term in Section 13.3.

**“Marketing Carrier”** means the air carrier whose Code is shown in the Carrier Code Box of a flight coupon for a Codeshared Flight but which is not the Operating Carrier.

**“Marketing Carrier Flight Coupon”** means a flight coupon (electronic or paper) of a ticket issued by the Marketing Carrier, Operating Carrier or a third party for travel on a Codeshared Flight showing the Marketing Carrier’s Code (i) in the carrier code box in the case of a paper ticket, and (ii) in the transporting carrier field in the case of an electronic ticket.

**“Marketing Carrier Indemnified Party”** has the meaning assigned to such term in Section 17.1.

**“Marketing Carrier Reviews”** has the meaning assigned to such term in Section 10.3.

**“Marketing Carrier Ticket”** means a ticket issued by the Marketing Carrier, Operating Carrier or a third party that contains at least one Marketing Carrier Flight Coupon.

**“Marketing Flight(s)”** means a Codeshared Flight when displayed, sold, or referred to as a flight of the Marketing Carrier rather than a flight of the Operating Carrier, such as when using the Marketing Carrier’s name, designator Code and/or flight number.

**“Mutual Emergency Assistance Agreement”** means the agreement between the Parties relating to provision of assistance by one Party to the other Party in the event of aircraft emergency.

**“Philippine Airlines”** has the meaning assigned in the preamble to this Agreement.

**“Philippines”** means the Republic of the Philippines.

**“O&D”** means origin and destination.

**“oneworld™ Alliance”** means the globally branded multilateral airline alliance in which American participates.

**“Operating Carrier”** means the air carrier having operational control of an aircraft used for a given Codeshared Flight.

**“Operating Carrier Indemnified Party”** has the meaning assigned to such term in Section 17.2.

**“Parent Carrier”** means American or Philippine Airlines, when referenced in relation to another carrier that is not a party to this Agreement and to which American or Philippine Airlines, as applicable, is Affiliated or from whom it wet leases aircraft, as applicable.

**“Party” or “Parties”** means either or both of American and Philippine Airlines, as the context requires.

**"Payee"** has the meaning assigned to such term in Section 19.4.

**"Payor"** has the meaning assigned to such term in Section 19.4.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization [or (except for the definition of "Affiliate" herein) government or any agency, authority or political subdivision of a government].

**"Procedures Manual"** means a detailed procedures manual prepared by the Parties for implementing the transactions contemplated by this Agreement.

**"Representatives"** has the meaning assigned to such term in Section 25.1.

**"Request"** has the meaning assigned to such term in Section 25.3.

**"Reservations System"** means the internal computerized airline passenger or cargo reservations system used by the personnel of an airline that contains information about flight schedules, fares, cargo rates, passenger and cargo tariff rules and seat availability of that airline and other carriers, and provides the ability to make reservations and issue tickets or air waybills.

**"Rules"** has the meaning assigned to such term in Section 22.2.

**"Special Prorate Agreement"** means any bilateral agreement, from time to time, between the Parties or between the Operating Carrier and the Ticketing Carrier, as applicable, relating to the proration of interline revenue.

**"Taxes"** means all taxes, assessments, fees, levies, imposts, duties, stamp taxes, documentary taxes or other charges of a similar nature, including, without limitation, income taxes, value-added taxes, sales taxes, excise taxes, transactional taxes, exchange control taxes and/or fees, and interest and penalties related to the foregoing, but excluding Ticket Taxes, that may be imposed by any Competent Authority.

**"TCN"** means Transaction Control Number, which represents an electronic collection of all the sales information contained on the auditor's coupon of a ticket.

**"Termination Date"** means 23:59 Coordinated Universal Standard Time on the date provided in the notice of termination given in accordance with Section 16.1.

**"Ticketing Carrier"** means a carrier whose traffic documents are used to issue a ticket.

**"Ticket Handling Fee"** means the payment by the carrier lifting the ticket to the Ticketing Carrier for expenses incurred as a result of issuing the ticket. Such payment is a percentage, agreed upon bilaterally by the Parties, of the prorated value billed by the carrier that lifted the ticket.

**"Ticket Taxes"** means any transactional taxes or passenger facility charges, including, without limitation, sales taxes, use taxes, stamp taxes, excise taxes, value added taxes, gross receipts taxes, departure taxes, surcharges and travel taxes, and all related charges, fees, licenses or assessments (and any interest or penalty thereon) imposed on passengers (or which air carriers or their agents are required to collect from passengers) by any authority in any country, or political subdivision thereof or public authority operating therein (including, without limitation any national, federal, state, provincial, territorial, local, municipal, port or airport authority) or which are levied upon passengers by operation of Applicable Law or industry standard. Ticket Taxes together with the taxes referred to in Section 19.1 are collectively referred to as "Taxes".

**"US\$" or "\$" or "Dollars"** means lawful currency of the United States of America.

**"U.S." or "United States"** means the fifty states of the United States of America, the District of Columbia and the Commonwealth of Puerto Rico.

**"Wetleased Codeshared Flights"** shall have the meaning assigned to such term in Section 2.9.

**ANNEX B  
CODESHARED ROUTES**

The Parties shall mutually designate certain flights serving the Codeshared Routes shown below on which the Parties shall place their respective Codes. The implementation date for each Codeshared Route shall occur on a date to be mutually agreed between the Parties, subject to obtaining all Governmental Approvals. In the event that all Governmental Approvals have not been obtained by such mutually agreed date for some particular Codeshared Route(s), then the implementation date for each such Codeshared Route shall occur at a later date as mutually agreed by the Parties, but not later than [REDACTED] after the date all Governmental Approval are received by the Parties for each such Codeshared Route.

<u>Codeshared Routes</u>	<u>Operating Carrier</u>
<b>Routes between the U.S. /U.S. Territories and Asia:</b>	
Between Manila and:	
Honolulu	Philippine Airlines
Guam	Philippine Airlines
<b>U.S. Domestic Routes:</b>	
Between Los Angeles and:	
Atlanta	American
Denver	American
Houston	American
Las Vegas	American
Miami	American
New Orleans	American
Orlando	American
Washington, DC	American
<b>Intra-Asia Routes:</b>	
Between Manila and:	
Tokyo	Philippine Airlines
Between Cebu and:	
Tokyo	Philippine Airlines

## ANNEX C

### MINIMUM STANDARDS OF GROUND AND IN-FLIGHT SERVICES

The Parties agree that international ground and in-flight services should be competitive with other international carriers operating on the applicable Codeshare Routes, and that the services should remain competitive as improvements are made by other international carriers. The Parties also agree that the domestic ground and in-flight services should be competitive with other domestic carriers operating on the applicable Codeshare Routes, and that the services should remain competitive as improvements are made by other domestic carriers. Furthermore, the Parties agree that their ground and in-flight services should meet customer expectations, on an ongoing basis. In order to meet these objectives, Philippine Airlines and American may from time to time be required to implement service upgrades as mutually agreed upon by the Parties.

Operating standards and general passenger procedures and policies for the Codeshare Flights are detailed in the Procedures Manual.

The Parties agree to monitor in-flight consumer research on customer priorities and satisfaction. Benchmarking research will be conducted to prioritize individual product features based on their importance to overall customer satisfaction and to obtain customer satisfaction ratings for individual product categories as well as the overall airline experience. Ongoing research will also be conducted during the term of the contract, to monitor customer satisfaction. Where the two carriers have statistically different ratings for two consecutive quarters after implementation, on individual product categories or the overall airline experience, the airline with the lower ratings will take measures to improve ratings to a level statistically equal to that of the higher carrier. For international Codeshare Flights, such consumer research will use American-operated international services as a comparative benchmark. The Parties will meet periodically to review customer satisfaction and benchmarking research data, in order to identify product categories that require improvement by the carrier(s).

The Parties agree that the number of Codeshare Passenger complaints received by the Marketing Carrier regarding the Codeshare Flights will be measured twice a year by the Marketing Carrier as a ratio of Codeshare Passenger complaints per one thousand (1,000) passengers boarded. Codeshare Passenger complaints measured will be those from the following passenger groups: First and Business Class, Full Fare Coach, Premium Frequent Flyer Program Members, Airport Club Members, VIPs (very important persons), customers with disabilities, and complaints regarding sensitive issues (i.e., food poisoning, unaccompanied minors, discrimination, and international documents). If the ratio of Codeshare Passenger complaints for any one city-pair or for the total average of all of the Codeshare Flights exceeds [REDACTED] per one thousand (1,000) passengers boarded for any half year period, the Operating Carrier agrees to take the appropriate corrective actions, upon notification by the Marketing Carrier.

The Operating Carrier agrees to review passenger and baggage mishandling complaints and further, the Operating Carrier agrees to take the appropriate corrective actions.

If the Operating Carrier fails to meet the standards established by this Annex C or incurs excess aircraft incidents affecting the Codeshare Flights, the Marketing Carrier, at its discretion, will be entitled to withdraw its Code from the affected Codeshare Flight(s). If the affected Codeshare Flights are not brought back into compliance with this Annex C within [REDACTED] following the removal of the Marketing Carrier's Code from the affected Codeshare Flight(s), the Marketing Carrier, at its discretion, will be entitled to terminate the Agreement in its entirety or with respect to the affected Codeshare Flight(s) in accordance with Section 16.3.



## AUTOMATION

The Parties shall develop, design and implement a computer automation system for the operational interface of each Party's current computer system in order to provide the highest quality product to Codeshared Passengers. Each Party will be responsible for the cost and expense associated with modifying its own computer system. The Parties shall, at a minimum, agree to develop, design and implement the automation of the following systems to support the Codeshared Flights:

**Automated Reservation (PNR) Exchange** - The Operating Carrier will accept automatically Codeshared Passenger PNRs and Special Service Request (SSR) items from the Marketing Carrier's computer system.

**Pre-Reserved Seating** - A mechanism will exist so that pre-reserved seating on the Codeshared Flights will be available to Codeshared Passengers.

**Flight Movement Messages** - The Operating Carrier must provide, in a timely fashion, flight movement messages (e.g., departure, delay and arrival times) for the Codeshared Flights to the Marketing Carrier's computer system.

**Airport Check-in** - Automation must exist between the Parties so that transiting passengers will not need to recheck-in at the transit city. Codeshared Passengers will check-in at the applicable origin station and be provided boarding passes for all segments of such Codeshared Passengers' itinerary.

**Hand Back Messages (Post Departure Reconciliation and Close-out)** - The Operating Carrier must provide electronically a list of Codeshared Passengers who traveled on the Codeshared Flights. The preferred format is an IATA-standard Passenger Reconciliation List (PRL).

**Support for Marriage Journey Controls** - Each Party agrees to use reasonable efforts to promptly implement, if it has not already done so, reasonable, mutually-agreed "Journey Control" and "Married Segment Logic" functionality regarding O&D inventory controls and revenue management functionality optimization. These controls are designed to prevent agency abuse by allowing each Party to determine the intended O&D requested by the customer and applying appropriate inventory controls. Married Segment Logic prevents booking flow availability and subsequently canceling an unwanted segment in order to get a local leg that is otherwise not available. Journey Control prevents booking flow availability on two locally available legs when the flow is closed. Industry standard practice imposes the application of appropriate Journey Controls and Married Segment Logic on the Marketing Carrier. To the extent that one of the Parties has not yet implemented these functionalities, the Parties agree to meet on a regular cadence, but at least quarterly, to discuss progress in implementation of these functionalities in order to ensure systems and function compatibility between the Parties regarding these systems.

**Support for Differentiated Point-of-Sale Availability** -- Because fares can differ significantly for journeys that involve international O&D, the Parties acknowledge that their inventory systems must recognize and account for these differences in fare value when calculating availability. To the extent that either Party's inventory management systems do not currently incorporate such functionality, such Party agrees to use reasonable efforts to promptly implement such functionality in a reasonable, mutually-agreed manner. The Parties agree to meet on a regular cadence, but at least quarterly, to discuss progress in implementation of this functionality in order to ensure systems and function compatibility between the Parties regarding this function.

**Interactive (also known as Seamless or Cascading) Availability and Interactive (also known as Seamless or Cascading) Sell** - Interactive EDIFACT messaging, if and when implemented, allows for a more robust exchange of information, allowing carriers to transmit information in a Forward (Carrier A to Carrier B)

and Reverse (Carrier B to Carrier A) flow of airline availability (PAOREQ/PAORES) and sell (ITAREQ/ITARES) data. The Interactive EDIFACT messaging allows the request of carrier availability at an O&D level, the exchange of requests (PAOREQ/ITAREQ) and their proper response (PAORES/ITARES). It also allows the reflection of true operating carrier inventory at time of sale and the sharing of both Prime (interline) and Codeshare availability and sell information for both revenue and redemption inventories exchange of RBDs. For purposes of this paragraph, the following terms and acronyms have the following meaning:

- “PAOREQ” or “Product Availability Request” means the EDIFACT message in which the Marketing Carrier requests an Operating Carrier’s availability;
- “PAORES” or “Product Availability Response” means the EDIFACT message in which the Operating Carrier responds to the Marketing Carrier’s availability request;
- “ITAREQ” or “Inventory Adjustment Request” means the EDIFACT message in which the Marketing Carrier communicates a sale from the Operating Carrier’s inventory; and
- “ITARES” or “Inventory Adjustment Response” means the EDIFACT message in which the Operating Carrier confirms the Marketing Carrier’s sale of its inventory.

#### FACILITIES

The Parties acknowledge the importance of maintaining functional and accurate signs identifying the Marketing Carrier, as appropriate, to facilitate passenger convenience and to avoid confusion at airports served by the Codeshared Flights. The Operating Carrier shall ensure that ticket counters at each station will identify prominently the Marketing Carrier, and promote the Marketing Carrier equally to the other airlines that have a similar cooperative relationship with the Operating Carrier at such airports. The Parties shall mutually agree on the placement of such signs, subject to the approval of the relevant airport authority or other lessors.

The Operating Carrier will be responsible for the cost and expense associated with developing and installing the appropriate signs at airports served by the Codeshared Flights.

Each Party shall make commercially reasonable efforts to depart from or arrive at the same terminal at airports served by Codeshared Flights.

#### GATE AND RAMP HANDLING

The Operating Carrier shall arrange for trained personnel, acceptable to the Marketing Carrier, to handle all gate (including ramp handling) and boarding services of Codeshared Passengers on the Codeshared Flights.

All costs, fines, and penalties incurred with a refusal by the immigration (or equivalent) authorities of a country to permit entry of any Codeshared Passengers at a destination point, shall be borne by the Operating Carrier that delivers the passenger on the international segment of the itinerary.

**ANNEX D  
RESERVED**

**ANNEX E**  
**FINANCIAL SETTLEMENT**

**Codeshare Commission**

The Codeshare Commission only applies to the Codeshared Flights between the United States or any United States territories and the Philippines where either American or Philippine Airlines places its Marketing Carrier Code. The Codeshare Commission will apply to all fares including, but not limited to, published fares, unpublished fares, corporate discounts, and net fares. The Codeshare Commission will apply to all coupons issued for use on a Marketing Flight. The Codeshare Commission for these Codeshared Flights will be calculated on a monthly basis (separately from the billing for each Marketing Carrier Flight Coupon) by multiplying the [REDACTED] prorated value (as determined in accordance with Sections 6.2(a) and 6.3) of Marketing Carrier Flight Coupons by the applicable Codeshare Commission percentage, which for purposes of this Agreement, is detailed in the table below.

For Codeshared Flights between [REDACTED] and [REDACTED] and between [REDACTED] and [REDACTED]:

	Codeshare Commission
First Class Fare	[REDACTED]
Business Class Fare	[REDACTED]
Full Economy Class Fare	[REDACTED]
Other Economy Class Fare	[REDACTED]

The Ticketing Carrier, if the Marketing Carrier or the Operating Carrier, will receive the [REDACTED] [REDACTED] as provided in Section 6.4. The Ticketing Carrier, if a third party, will receive the [REDACTED] [REDACTED] as provided in Section 6.4.

The Codeshare Commission may be renegotiated by and between the Parties at any time by mutual written consent of the Parties hereto.

## ANNEX G DATA PRIVACY SUPPLEMENT

This Data Privacy Supplement (this “**Supplement**”) establishes baseline commitments regarding data privacy and security and represents a set of standard terms applicable to the relationship between American and Philippine Airlines. This Supplement forms part of the Agreement. In the event of a conflict between the terms of this Supplement and the rest of the Agreement, or in the event of any duplication in terms or definitions in this Supplement, the terms of this Supplement will override and only the definitions in this Supplement will be used in interpreting this Supplement. The term “including” or “includes” means including without limiting the generality of any description to which such term relates.

A. **Compliance with Law.** Each Party shall comply with Data Law applicable to such Party in its performance or receipt of services under the Agreement or to the Covered Personal Data. Each Party represents and warrants that:

- (a) as a disclosing Party (the “**Providing Party**”), it shall not disclose any Covered Personal Data to the other Party (the “**Receiving Party**”) save where this is lawful and in a form which is lawful;
- (b) the sharing of the Covered Personal Data pursuant to the Agreement is carried out in accordance with any notices supplied to and consents, if any, obtained from Data Subjects; and
- (c) it shall not Process any Covered Personal Data other than in accordance with Data Law applicable to such Party in its performance or receipt of services under the Agreement or to the Covered Personal Data.

B. **Use of Covered Personal Data.** The Receiving Party shall Process Covered Personal Data solely for the Purpose and in accordance with the provisions of the Agreement. For clarity, where a Party collects Personal Data directly from a Data Subject in connection with the Purpose, the collecting Party will be the Providing Party and the sole data controller in respect of such information retained by the Providing Party for its own purposes.

C. **Data Protection.** The Receiving Party shall at all times keep confidential all Covered Personal Data it Processes pursuant to the Agreement. The Receiving Party may disclose Covered Personal Data to its employees, officers, representatives, advisers or contractors (“**Processors**”) who need to know such information to fulfill the Purpose provided that the Receiving Party ensures its Processors are subject to appropriate binding written security and confidentiality obligations. The Receiving Party shall implement appropriate technical and organizational measures to protect Covered Personal Data against unauthorized or accidental access, loss, alteration, disclosure, destruction or other unauthorized or unlawful forms of Processing.

D. **Assistance.** The Receiving Party agrees to provide, upon the Providing Party’s request, reasonable assistance as may be required for the Providing Party to comply with its obligations under Data Law.

E. **Proprietary Rights.** For clarity, nothing in this Supplement is intended to waive or limit either Party’s proprietary rights in or to the Covered Personal Data in this or any other agreements between the Parties.

F. **Definitions.** Capitalized terms not defined in this Supplement shall have the meanings given in the Agreement. The following terms will have the meanings described below in this Supplement:

**“Covered Personal Data”** means Personal Data which is transferred by or on behalf of a Providing Party to a Receiving Party pursuant to the Agreement, and any copies or derivatives resulting from the Receiving Party’s Processing of such Personal Data.

**“Data Law”** means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute or other enactment, order, mandate or resolution, which is applicable to either Party, issued or enacted by any domestic or foreign, supra-national, national, state, county, municipal, local, territorial or other government or bureau, court, commission, board, authority, or agency, anywhere in the world, relating to data security, data protection and/or privacy, including the General Data Protection Regulation.

**“Data Subject”** means an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**“General Data Protection Regulation”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted from time to time.

**“Personal Data”** means any information relating to a Data Subject.

**“Privacy Policy”** means an entity’s consumer facing online privacy policy that describes how such entity Processes Covered Personal Data.

**“Purpose”** has the meaning given in Schedule 1 to this Supplement.

**“Process” or “Processing”** means any operation or set of operations that is performed upon Covered Personal Data, whether or not by automatic means, including, but not limited to, obtaining, developing, producing, collecting, recording, organizing, structuring, accessing, using, adapting, altering, modifying, retrieving, consulting, copying, reproducing, analyzing, disclosing, disseminating, making available, aligning, combining, blocking, restricting, transmitting, transferring, selling, renting, storing, retaining, destroying, deleting, or erasing such data. For the avoidance of doubt, “Process” includes the compilation or correlation of Covered Personal Data with information from other sources and the application of algorithmic analysis to create new or derivative data sets from Covered Personal Data.

G. **Subcontracting the Processing of Personal Data.** Each Party may subcontract any of its Processing under this Agreement provided that (a) the subcontracting is done pursuant to written agreement; (b) such written agreement shall impose to the sub-contractor, the same level of data protection and obligation under this Agreement; and (c) the Receiving Party shall remain fully liable to the Providing Party for the sub-contractor’s performance of its data protection and obligation under such written agreement.

H. **Data Breach Incident**

- (a) Each Party shall ensure that its respective employees who are given access to Covered Personal Data are subject to appropriate and binding confidentiality obligations in respect to such processing.
- (b) Except to the extent prohibited by applicable legal, regulatory or law enforcement

requirements, each Party shall inform the other Party in writing and in sufficient detail of any actual, anticipated or potential loss or disclosure of Covered Personal Data ("Data Privacy Breach") or any unauthorized or unlawful processing of any Covered Personal Data ("Data Protection Incident") (including any corrective action taken) within seventy-two (72) hours from its discovery.

- (c) For purposes of this provision, "discovery" shall mean the first day the Data Protection Incident is known, or should reasonably have been known, to have occurred by the information security department or team of the Party involved.

I. Termination. The Parties acknowledge that in the event of any loss or unauthorized release of the Covered Personal Data by the Receiving Party, the Providing Party may terminate the Codeshare Agreement upon written notice.

**Schedule 1**  
**Description of Data Processing**

**1. Categories of Covered Personal Data**

The Covered Personal Data concern the following categories:

Full legal names, dates of birth, contact information, passport information or other applicable identification document information, PNR, travel itineraries and payment information.

**2. Categories of Data Subjects**

The Covered Personal Data concern the following categories of individuals:

American's and Philippine Airlines' Codeshared Passengers.

**3. Purpose and processing activities**

The Covered Personal Data will be Processed by the Receiving Party for the following purposes and subject to the following processing activities (collectively, the "Purpose"):

**a. With respect to American as the Operating Carrier:**

- i. The use of Philippine Airlines' Covered Personal Data to book Philippine Airlines' customers on flights operated by American and provide related services (e.g., baggage services), to notify Philippine Airlines' customers of any changes to a scheduled flight, if needed, to determine commissions payable by Philippine Airlines, and the Processing of Philippine Airlines' Covered Personal Data as described in the Agreement and to provide the services described in the Agreement; and
- ii. Uses of booking or PNR data which are consistent with American's Privacy Policy; and
- iii. Billing of Philippine Airlines for any amounts (i.e. commission) owed by Philippine Airlines under the Agreement, including for the resolution of any billing disputes;

**b. With respect to Philippine Airlines as the Operating Carrier:**

- i. The use of American's Covered Personal Data to book American's customers on flights operated by Philippine Airlines and provide related services (e.g., baggage services), to notify American's customers of any changes to a scheduled flight, if needed, to determine commissions payable by American, and the Processing of American's Covered Personal Data as described in the Agreement and to provide the services described in the Agreement; and
- ii. Uses of booking or PNR data which are consistent with Philippine Airlines' Privacy Policy; and
- iii. Billing of American for any amounts (i.e. commission) owed by American under the Agreement, including for the resolution of any billing disputes.

