

AGREED RECORD

1. Delegations representing the respective Governments of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSAR") and the United States of America met in Hong Kong on 16 -19 October 2002 to discuss arrangements for the implementation of the Air Services Agreement between their respective governments signed on 7 April 1997. A list of the two delegations is at Annex 1.
2. The two delegations signed a Memorandum of Understanding which is at Annex 2.
3. The HKSAR side indicated, and the US side noted, that the bilateral air services agreement and arrangements between the HKSAR Government and the US Government govern "all scheduled air services to, from or through Hong Kong, which do not operate to, from or through the mainland of China" as provided in Article 133 of the Basic Law. Accordingly, the 1997 Agreement, the 1995 Hong Kong/United States of America Memorandum of Understanding ("the 1995 MOU"), and the MOU at Annex 2 cover only scheduled air services from the United States operating to, from or through Hong Kong which do not operate to, from or through the mainland of China.
4. The two sides confirmed that a designated airline of one Contracting Party carrying fifth freedom traffic between the area of the other Contracting Party and a fifth freedom point authorised in accordance with the MOU at Annex 2 may further carry such traffic between the authorised fifth freedom point and other points provided that there is a change of flight number at the authorised fifth freedom point.
5. The two sides also confirmed their understanding that the principles found in paragraph (3) of Article 8 of the Agreement (the "principles") apply to the exercise of fifth freedom traffic rights by the designated airlines of both parties in starburst services and code-share services. If either side is of the view that the operation of the said services by a designated airline of the other side is not in conformity with the principles, it may request consultations with the other side as provided for in paragraph (4) of Article 8. The two sides would meet promptly with a view to determining whether the said services are operated in accordance with the principles. If the Contracting Parties conclude that the operation of the said services is not in

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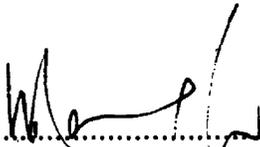
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conformity with the principles, they may decide upon appropriate corrective or remedial measures.

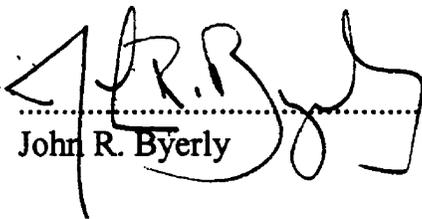
6. The two delegations expressed their intention to meet again to review bilateral air services arrangements in 2005.

For the delegation of the
Government of the Hong Kong
Special Administrative Region of
the People's Republic of China :

For the delegation of the Government
of the United States of America:



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Mary S.C. Chow



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John R. Byerly

19 October 2002, Hong Kong

**Hong Kong/United States of America
Memorandum of Understanding**

1. Delegations representing the Government of the United States of America and the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("HKSAR") met in Hong Kong from 16 to 19 October 2002 to discuss the conduct of air services between the United States and Hong Kong under the Agreement between the Government of the United States of America and the Government of Hong Kong concerning Air Services, signed at Hong Kong 7 April 1997 ("the 1997 Agreement").

Routes

2. In accordance with the Annex to the 1997 Agreement, the delegations determined that the designated airlines may serve the agreed routes contained in Appendix i to this Memorandum. These routes replace Hong Kong Routes 1 and 2 and U.S. Routes 1, 2 and 3 as contained in Section I of the Appendix to the 1995 Hong Kong/United States of America Memorandum of Understanding ("the 1995 MOU").

3. Appendix 2 contains revised notes applicable to all routes, which replace Notes 1, 3, 4, and 6 in Section II of the Appendix to the 1995 MOU.

Code Sharing

4. Designated airlines of the two sides may engage in cooperative marketing arrangements in accordance with the following provisions:

4.1. In operating or holding out the authorized services pursuant to the agreed routes and the Notes Applicable to All Routes as set out in Section II of the 1995 MOU and modified by Appendix 2 of this MOU, any designated airline of one side may enter into code-share arrangements with:

- (i) an airline or airlines of either side, and/or
- (ii) an airline or airlines of a third country,

provided that the arrangements do not involve any points in Taiwan and all airlines in such arrangements (1) hold the

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appropriate authority, including the underlying route rights, and (2) meet the requirements normally applied to such arrangements, including competition considerations.

- 4.2. Notwithstanding paragraph 4.1, code-share operations on Hong Kong Route 1 by the designated airlines of Hong Kong on segments between points of direct service in Canada and the United States and code-share points in the United States are subject to the following code-share restrictions:
- (i) with immediate effect, up to 20 code-share points in the United States may be served by Hong Kong airlines;
 - (ii) with effect from IATA Winter Season 2003, up to 25 code-share points in the United States may be served by Hong Kong airlines;
 - (iii) the Government of the HKSAR will notify the Government of the United States of its point selections under (i) and (ii) above in writing and may, at its discretion, change the points selected with not less than 30 days' notice to the Government of the United States in writing; and
 - (iv) from each point of direct service in Canada or the United States, a Hong Kong designated airline may code-share on up to 21 weekly round trip frequencies to each code-share point in the United States.
- 4.3. A marketing airline designated by either side involved in the code-share arrangements may hold out and market fifth freedom services on any sector where fifth freedom rights are available to that airline under this MOU.
- 4.4. For the purpose of counting fifth freedom frequencies available under this MOU, the operation or marketing by each designated airline of each code-share flight to one or more fifth freedom points with the exercise of fifth freedom rights counts as one fifth freedom frequency for each airline participating in the code-share service. Irrespective of the routing, each flight to each fifth freedom point counts as one frequency against the applicable per point frequency entitlement and per carrier frequency entitlement.

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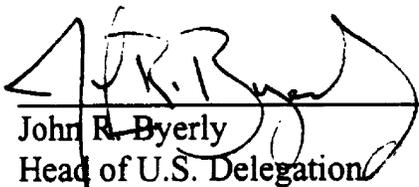
- 4.5. The designated airline(s) of either side are permitted to transfer traffic (i.e. starburst) between aircraft involved in the code-share operations without restriction as to number, size and type of aircraft. The exercise of fifth freedom rights on starburst services is subject to paragraph (d) of Note 6 and paragraph (c) of Note 6A of Notes Applicable to All Routes as set out in Section II of the 1995 MOU, as modified by Appendix 2 of this MOU.
- 4.6. Applications in accordance with the above code-share arrangements should be submitted by the designated airline(s) participating in code-share arrangements to the aeronautical authorities of both sides for approval at least 30 days in advance, unless the requirement for approval is waived in advance by the aeronautical authorities concerned. In case it is foreseen that a decision cannot be made within 30 days, the aeronautical authorities concerned should notify the designated airline(s) concerned.

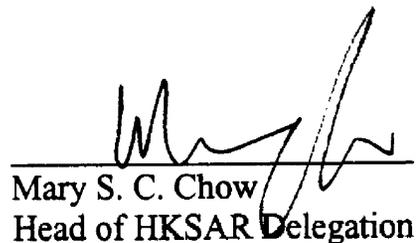
Dispute Resolution

5. For the avoidance of doubt, neither side intends to object to the submission of the provisions of this MOU as evidence in relation to an issue in dispute before any arbitral tribunal established under Article 17 of the 1997 Agreement.

Application

6. The two delegations understood that the arrangements set out in this MOU would become effective from the date this MOU is signed, and that the provisions of the 1995 MOU would continue to apply unless specifically replaced by the provisions of this MOU.


John R. Byerly
Head of U.S. Delegation


Mary S. C. Chow
Head of HKSAR Delegation

Hong Kong, 19 October 2002

Appendix 1

Hong Kong SAR Route 1: Combination Air Services

(A) Hong Kong	(B) <u>Intermediate and Beyond Points</u> ¹	(C) A Point or Points in the United States
	Japan ² Korea ³ Two points to be selected ⁴ Canada ⁵ Points in 5 countries ⁶	

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- 1 Until the beginning of the IATA Winter 2003 traffic season, Hong Kong airlines taken together may operate no more than 28 weekly round trip frequencies with full traffic rights between the United States and points in Column B taken together, except as provided in footnote 5 below. From the beginning of the IATA Winter 2003 traffic season, Hong Kong airlines taken together may operate no more than 42 weekly round trip frequencies with full traffic rights between the United States and points in these countries taken together, except as provided in footnote 5 below. Except as provided in footnotes 2, 4, and 5, Hong Kong airlines taken together may operate no more than 7 of these weekly round trip frequencies with full traffic rights between the United States and each point in the countries in Column B.
 - 2 Until April 2003, Hong Kong airlines taken together may operate up to 7 weekly round trip frequencies with full traffic rights between the United States and points in Japan. From April 2003 until the beginning of the IATA winter 2003 traffic season, Hong Kong airlines taken together may operate up to 14 weekly round trip frequencies with full traffic rights between the United States and points in Japan, 7 of which are available only for use at Tokyo. From the beginning of the IATA winter 2003 traffic season, Hong Kong airlines taken together may operate up to 18 weekly round trip frequencies with full traffic rights between the United States and points in Japan, 7 of which are available only for use at Tokyo and 4 of which are available only for use at Osaka.
 - 3 Not available until the beginning of the IATA winter 2003 traffic season, unless selected pursuant to footnote 4.
 - 4 Notwithstanding footnote 1 above, Hong Kong airlines may operate up to 7 weekly round trip frequencies with full traffic rights between the United States and each of these points. The Government of the HKSAR will notify the Government of the United States of its selections in writing with not less than 30 days notice. The points selected by the Government of the HKSAR may, at its discretion, be changed from time to time with not less than 30 days notice to the Government of the United States in writing.
 - 5 The frequency limitations provided in footnote 1 above do not apply to Hong Kong airlines' operations exercising full traffic rights between Canada and the United States.
 - 6 To be mutually agreed by the Government of the HKSAR and the Government of the United States.

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Hong Kong SAR Route 2: All-Cargo Air Services

(A)	(B)	(C)
Hong Kong	<u>Intermediate and Beyond Points</u> ^{1,2} Philippines ³ France ⁴ Germany ⁵ Ten other countries to be selected ^{6,7} Two points to be selected ^{8,9}	A Point or Points in the United States

1 Effective immediately, Hong Kong airlines taken together may operate no more than 32 weekly round trip frequencies with full traffic rights between the United States and points in Column B taken together. From the beginning of the IATA Winter 2003 traffic season, Hong Kong airlines taken together may operate no more than 48 weekly round trip frequencies with full traffic rights between the United States and these points taken together. From the beginning of the IATA Winter 2004 traffic season, Hong Kong airlines taken together may operate no more than 64 weekly round trip frequencies with full traffic rights between the United States and these points taken together.

2 Taiwan may not be a point in Column B.

3 Hong Kong airlines taken together may operate no more than 12 weekly round trip frequencies between points in the United States and Subic and no more than 12 such frequencies between points in the United States and Clark. In the event that Hong Kong airlines cease all services to Subic, the Government of the HKSAR may with 90 days notice to the Government of the United States in writing transfer irrevocably the whole of its frequency entitlement in relation to Subic to Clark. In such case, Hong Kong airlines taken together may operate up to 24 weekly round trip frequencies with full traffic rights to Clark, with a maximum of 12 such frequencies per Hong Kong airline. Hong Kong airlines taken together may operate no more than 7 weekly round trip frequencies with full traffic rights between the United States and any point in the Philippines other than Subic or Clark.

4 Available from the beginning of the IATA Winter 2003 traffic season. Hong Kong airlines taken together may operate to one point in France. Full traffic rights may be exercised on no more than 6 weekly round trip frequencies with full traffic rights between the United States and this point. The Government of the HKSAR will notify the Government of the United States of its selection with not less than 30 days notice in writing. The Government of the HKSAR may, at its discretion, change the point selected with not less than 30 days notice to the Government of the United States in writing. In addition to the rights available in footnote 5 below, the Government of the HKSAR may, with at least 90 days notice in writing to the Government of the United States, convert this point into a point in Germany excluding Frankfurt. Once converted, such point may not be changed to another point in Germany or be reconverted into a point in France. Hong Kong airlines may operate no more than 6

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weekly round trip frequencies with full traffic rights between the United States and the point chosen, except that, if the same point is chosen under footnote 5, Hong Kong airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between the United States and such point, with a maximum of 6 such frequencies per Hong Kong airline.

- 5 Available from the beginning of the IATA Winter 2003 traffic season. Hong Kong airlines taken together may operate to one point in Germany excluding Frankfurt. Full traffic rights may be exercised on no more than 6 weekly round trip frequencies between the United States and this point, except as provided in footnote 4. The Government of the HKSAR will notify the Government of the United States of its selections with not less than 30 days notice in writing. The Government of the HKSAR may, at its discretion, change this point with not less than 30 days notice to the Government of the United States in writing.
- 6 Selections may not include Switzerland, Bangladesh, Sri Lanka, Pakistan, Japan, Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Thailand, India, Malaysia, and Singapore may not be served before the beginning of the IATA Winter 2003 traffic season. The Government of the HKSAR will notify the Government of the United States of its selections with not less than 30 days notice in writing. The Government of the HKSAR may, at its discretion, change the countries selected with not less than 30 days notice to the Government of the United States in writing.

Hong Kong airlines taken together may operate no more than 7 weekly round trip frequencies with full traffic rights between the United States and each point in the countries selected. Notwithstanding the previous sentence, effective from the beginning of the IATA Winter 2003 traffic season, Hong Kong airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between the United States and points in Korea taken together. The Government of the HKSAR will notify the Government of the United States of its selections with not less than 30 days notice in writing. The Government of the HKSAR may, at its discretion, change these points with not less than 30 days notice to the Government of the United States in writing.

- 8 Restrictions on the selection of points contained in footnotes 2, 3, 4, 5 and 6 do not apply to these points. The Government of the HKSAR will notify the Government of the United States of its selections with not less than 30 days notice in writing. Points selected by the Government of the HKSAR may, at its discretion, be changed from time to time with not less than 30 days notice to the Government of the United States in writing.
- 9 Hong Kong airlines may operate no more than 8 weekly round trip frequencies with full traffic rights between the United States and these points taken together. One of these frequencies may be converted into two weekly flights to be operated by aircraft with a capacity of less than 50 tonnes operated to and from U.S. points not in the continental United States. The converted frequencies can only be used to exercise full traffic rights between the United States and one of these points. Such conversion shall apply for the remainder of the traffic season in which it is made. No more than 5 weekly frequencies can be operated to any one point. However, frequencies operated pursuant to this footnote may be combined with those operated pursuant to footnote 7.

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United States Route 1: Combination Air Services

(A)	(B)	(C)
A Point or Points in the United States	<u>Intermediate and Beyond Points</u> ¹	Hong Kong
	Indonesia	
	Japan ²	
	Korea ³	
	Malaysia	
	Singapore ⁴	
	Thailand	
	Vietnam	

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- ¹ Until the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 35 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. From the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 49 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. Except as provided in footnotes 2 and 4 below, U.S. airlines taken together may operate no more than 7 of these weekly frequencies between Hong Kong and each point in these countries.
 - ² Until April 2003, U.S. airlines taken together may operate no more than 14 weekly round trip frequencies with full traffic rights between Hong Kong and points in Japan. From April 2003 until the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 21 weekly round trip frequencies with full traffic rights between Hong Kong and Japan, 7 of which are available only for use at Tokyo. From the beginning of the IATA winter 2003 traffic season, US airlines taken together may operate up to 25 weekly round trip frequencies with full traffic rights between Hong Kong and points in Japan, 7 of which are available only for use at Tokyo and 4 of which are available only for use at Osaka.
 - ³ Not available until the beginning of the IATA Winter 2003 traffic season.
 - ⁴ U.S. airlines taken together may operate up to 14 weekly round trip frequencies with full traffic rights between Hong Kong and Singapore.

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United States Route 2: All-Cargo Air Services

(A)	(B)	(C)
A Point or Points in the United States	<u>Intermediate and Beyond Points</u> ^{1,2} Philippines ³ France ⁴ Germany ⁵ Ten other countries to be selected ^{6,7}	Hong Kong

1 Effective immediately, U.S. airlines taken together may operate no more than 32 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. From the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 48 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. From the beginning of the IATA Winter 2004 traffic season, U.S. airlines taken together may operate no more than 64 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. Subject to the per point and per carrier frequency limits in footnotes 3 and 7 below, one of these frequencies may be converted into two weekly flights to be operated by aircraft with a capacity of less than 50 tonnes operated to and from points in the United States not in the continental United States. The converted frequencies can only be used to exercise full traffic rights between Hong Kong and Korea, Thailand or the Philippines. Such conversion shall apply for the remainder of the traffic season in which it is made.

2 Taiwan may not be a point in Column B.

3 U.S. airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between Hong Kong and Clark and no more than 12 such frequencies between Hong Kong and Subic. In the event that U.S. airlines cease all services to Subic, the Government of the United States may with 90 days notice to the Government of the HKSAR in writing transfer irrevocably the whole of its frequency entitlement in relation to Subic to Clark. In such case, U.S. airlines taken together may operate up to 24 weekly round trip frequencies with full traffic rights to Clark, with a maximum of 12 such frequencies per U.S. airline. U.S. airlines taken together may operate no more than 7 weekly round trip frequencies with full traffic rights between Hong Kong and any point in the Philippines other than Subic or Clark.

4 Available from the beginning of the IATA Winter 2003 traffic season. U.S. airlines taken together may operate to one point in France. Full traffic rights may be exercised on no more than 6 weekly round trip frequencies with full traffic rights between Hong Kong and this point. The Government of the United States will notify the Government of HKSAR of its selection with not less than 30 days notice in writing. The Government of the United States may, at its discretion, change the point selected with not less than 30 days notice to the Government of the HKSAR in writing. In addition to the rights available in footnote 5 below, the Government of the United States may, with at least 90 days notice in writing to the Government of the HKSAR, convert this point into a point in Germany

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excluding Frankfurt. Once converted, such point may not be changed to another point in Germany or be reconverted into a point in France. U.S. airlines may operate no more than 6 weekly round trip frequencies with full traffic rights between Hong Kong and the point chosen, except that, if the same point is chosen under footnote 5, U.S. airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between Hong Kong and such point, with a maximum of 6 such frequencies per U.S. airline.

- 5 Available from the beginning of the IATA Winter 2003 traffic season. U.S. airlines taken together may operate to one point in Germany excluding Frankfurt. Full traffic rights may be exercised on no more than 6 weekly round trip frequencies between Hong Kong and this point, except as provided in footnote 4. The Government of the United States will notify the Government of the HKSAR of its selection with not less than 30 days notice in writing. The Government of the United States may, at its discretion, change this point with not less than 30 days notice to the Government of the HKSAR in writing.
- 6 Selections may not include Switzerland, Bangladesh, Sri Lanka, Pakistan, Japan, Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Thailand, India, Malaysia, and Singapore may not be served before the beginning of the IATA Winter 2003 traffic season. The Government of the United States will notify the Government of the HKSAR of its selections with not less than 30 days notice in writing. The Government of the United States may, at its discretion, change the countries selected with not less than 30 days notice to the Government of the HKSAR in writing.
- 7 U.S. airlines taken together may operate no more than 7 weekly round trip frequencies with full traffic rights between Hong Kong and each point in the countries selected. Notwithstanding the previous sentence, effective from the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between Hong Kong and points in Korea taken together. The Government of the United States may, at its discretion, change these points with not less than 30 days notice to the Government of the HKSAR in writing.

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Appendix 2

1. In addition to the right to carry transit, connecting and local traffic between points in column B and points in column C, designated airlines may carry transit and on-line connecting traffic between points in column C and points in other destinations, including points not listed in column B. Such on-line connecting traffic may be connected at any points in columns A, B or C or at points in countries not listed in such columns.

3. Except as may be otherwise specifically provided, a designated airline may, on any or all flights, and at its option, serve points on a route and operate via points not listed in columns A, B or C in any order, operate flights in either or both directions, and omit stops at any point or points, without loss of any right to uplift or discharge traffic otherwise permissible under the relevant routes or notes applicable thereto, provided that the service begins or terminates in the area of the Contracting Party designating the airline.

4. A designated airline may carry traffic between points in column A and points in column C, on the same flight or otherwise, via any points including points not listed in column B but excluding points in the areas of the Contracting Parties.

Change of Gauge for Combination Services

6. A designated airline of one Contracting Party operating on Hong Kong Route 1 or U.S. Route 1 may make changes of gauge at points in column B or at other points outside of the area of the other Contracting Party without any limit on size or number of aircraft. Such an airline may also make a change of gauge in the area of the other Contracting Party without any limit on size or number of aircraft. The above changes of gauge are subject to the following conditions:

- (a) aircraft for such operations shall be scheduled in coincidence with corresponding flight(s) to/from the area of the Party designating the airline;
- (b) the onward flight(s) is scheduled to depart within 3 hours of the scheduled arrival of the corresponding incoming flight(s), unless airport curfews, airport slots, or other operational

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constraints, at the point where the change of gauge occurs or at the next point or points of destination of the flight(s), prevent such scheduling;

- (c) if the incoming flight(s) is delayed by unforeseen operational or mechanical problems, the onward flight(s) may operate without regard to the conditions in paragraphs (a) and (b) above;
- (d) fifth freedom traffic rights, if available, may be exercised on one starburst flight beyond a point of change of gauge made in the area of the other Contracting Party;
- (e) where fifth freedom traffic rights are exercised on any flight, including a starburst flight, operations beyond the point of change of gauge shall be performed by an aircraft having capacity less, for outbound services, or more, for inbound services, than that of the arriving aircraft;
- (f) for the purpose of counting fifth freedom frequencies available under this MOU, the operation or marketing by each designated airline of each starburst flight to one or more fifth freedom points with the exercise of fifth freedom rights shall be counted as one fifth freedom frequency. Irrespective of the routing, each flight to each fifth freedom point shall be counted as one frequency against the applicable per point frequency entitlement and per carrier frequency entitlement; and
- (g) starburst flights of an airline beyond the point of change of gauge may have flight numbers different from that of the corresponding flight to or from the area of the Party designating the airline.

Change of Gauge for All-Cargo Services

6A. A designated airline of one Contracting Party operating on Hong Kong Route 2 or U.S. Route 2 may make changes of gauge at points in column B or at other points outside of the area of the other Contracting Party without any limit on size or number of aircraft. Such an airline may also make a change of gauge in the area of the other Contracting Party without any limit on size or number of aircraft. The above changes of gauge are subject to the following conditions:

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- (a) aircraft for such operations shall be scheduled in coincidence with corresponding flight(s) to/from the area of the Party designating the airline;
- (b) if the incoming flight(s) is delayed by unforeseen operational or mechanical problems, the onward flight(s) may operate without regard to the conditions in paragraph (a) above;
- (c) fifth freedom traffic rights, if available, may be exercised on up to two starburst flights beyond a point of change of gauge made in the area of the other Contracting Party;
- (d) for the purpose of counting fifth freedom frequencies available under this MOU, the operation or marketing by each designated airline of each starburst flight to one or more fifth freedom points with the exercise of fifth freedom rights shall be counted as one fifth freedom frequency. Irrespective of the routing, each flight to each fifth freedom point shall be counted as one frequency against the applicable per point frequency entitlement and per carrier frequency entitlement; and
- (e) starburst flights of an airline beyond the point of change of gauge may have flight numbers different from that of the corresponding flight to or from the area of the Party designating the airline.

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