AGREEMENT

BETWEEN

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

AND

THE GOVERNMENT OF NEW ZEALAND

ON

AIR SERVICES

The Government of the Socialist Republic of Viet Nam and the Government of New Zealand, hereinafter referred to as "the Contracting Parties";

Being parties of the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944;

Desiring to conclude an agreement for the purpose of establishing air services between and beyond their respective territories;

Desiring to ensure the highest degree of safety and security in international air transport;

Recognizing that Asia Pacific Economic Cooperation member economies, through the Bogor Declaration of Common Resolve, agreed to eliminate impediments to economic cooperation and integration, and committed themselves to free and open trade in goods, services and investments no later than 2010 and in the case of developing economies no later than 2020;

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement, unless the context otherwise requires:

(a) the term "aeronautical authorities" means, in the case of the Socialist Republic of Viet Nam, the Civil Aviation Administration of Viet Nam - Ministry of Transport, and in the case of New Zealand, the Minister responsible for the subject of Civil Aviation or, in both cases, any other authority or person empowered to perform the functions now exercised by the said authorities;

(b) the term "agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination;

(c) the term "Agreement" means this Agreement, its Annex, and any amendments thereto;

(d) the term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted or ratified by both Contracting Parties;

(e) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

(f) the term "tariffs" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other ancillary services, but excluding remuneration and conditions for the carriage of mail;

(g) the term "air services", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention; and

(h) the term "territory" in relation to a State means land areas (mainland and islands), internal waters and territorial water adjacent thereto and airspace above them under the sovereignty of that State, provided that, in the case of New Zealand, the term "territory" shall exclude Tokelau.

Article 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airline designated by the other Contracting Party:

(a) to fly without landing across the territory of the other Contracting Party;

(b) to make stops in the said territory for non-traffic purposes; and

(c) to make stops in the said territory for the purpose of taking up and discharging, while operating the routes specified in the Annex, international traffic in passengers, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on a designated airline of one Contracting Party the privilege of taking up, in the territory of the other Contracting Party, passengers, cargo and mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

3. Passengers, baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 3
Designation and Authorization

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation.

2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Contracting Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:

a) the designated airline has its principal place of business in the territory of the designating Contracting Party;

b) the Contracting Party designating the airline has and maintains effective regulatory control of the airline;

c) the Party designating the airline is in compliance with the provisions set forth in Article 6 and Article 7; and

d) the designated airline is qualified to meet other conditions prescribed under the laws, regulations and rules normally applied to the operation of international air transport services by the Contracting Party receiving the designation.

Article 4
Withholding, Revocation and Limitation of Authorisation

1. The aeronautical authorities of each Contracting Party shall have the right to withhold the authorisations referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, to revoke or suspend such authorisations or impose conditions, temporarily or permanently:

(a) in event of failure by such airline to qualify before the aeronautical authorities of that Contracting Party under the laws, regulations and rules normally and reasonably applied by these authorities in conformity with the Convention;

(b) in the event of failure by such airline to comply with the laws, regulations and rules of that Contracting Party;

(c) in the event that they are not satisfied that the designated airline has its principal place of business in the territory of the designating Party;

(d) in the event that they are not satisfied that the Party designating the

airline has and maintains effective regulatory control of the airline; and

(e) in case the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further infringement of the laws, regulations and rules referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the aeronautical authorities of the other Contracting Party in conformity with Article 14 of this Agreement.

Article 5
Application of Laws, Regulations and Rules

1. The laws, regulations, rules and procedures of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft shall be complied with by the airline or airlines of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws, regulations and rules of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the airline or airlines of the other Contracting Party and by or on behalf of its crews, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.

3. Neither of the Contracting Parties shall give preference to its own or any other airline over an airline of the other Contracting Party engaged in similar international air services in the application of its customs, immigration, quarantine and similar regulations.

Article 6
Recognition of Certificates and Licences (Safety)

1. Certificates of airworthiness, certificates of competency and licences, issued or validated by one Contracting Party and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services on the routes specified in the Annex provided that such certificates or licences were issued or validated pursuant to, and in conformity with, the standards established under the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above or landing within its own territory, certificates of competency and licences granted to its own nationals by the other Contracting Party.

2. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft, and operation of the designated airlines. If, following such consultations, one Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, revoke or limit the operating authorization or technical permission of an airline or airlines designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate action within a reasonable time.

Article 7
Aviation Security

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

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

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

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

5. Each Contracting Party shall also give sympathetic consideration to a request from the other Contracting Party to enter into reciprocal administrative arrangements whereby the aeronautical authorities of one Contracting Party could make in the territory of the other Contracting Party their own assessment of the security measures being carried out by aircraft operators in respect of flights destined for the territory of the Contracting Party making such a request.

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

7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultation with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement on the issues involved within 30 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization of an airline or airlines of that Contracting Party. When required to do so by an emergency, a Contracting Party may take interim action prior to the expiry of 30 days.

Article 8
Customs Duties and Other Charges

1. Each Contracting Party shall on a basis of reciprocity exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular equipment, aircraft stores (including liquor, tobacco) and other items intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline or airlines of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article:

(a) introduced into the territory of one Contracting Party by or on behalf of the designated airline or airlines of the other Contracting Party;

(b) retained on board aircraft of the designated airline or airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;

(c) taken on board aircraft of the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services.

Whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided such items are not alienated in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline or airlines of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with Customs regulations.

Article 9
Principles Governing the Operation of Agreed Services

1. There shall be fair and equal opportunity and equal capacity entitlement for the designated airlines of both Contracting Parties to operate the agreed services on the routes specified in the Annex.

2. In the operation of the agreed services, the designated airlines of both Contracting Parties shall consider the interests of the designated airline of the other Contracting Party so as not to affect unduly the agreed services of the latter on the whole or part of the same route.

3. The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes. They shall have as their primary objective the provision at a reasonable load factor of capacity adequate for the current and reasonably anticipated requirements of passengers, cargo and mail originating from or destined for the territory of the Contracting Party which has designated the airline or airlines.

4. Provision for the carriage of passengers, cargo and mail both taken up and discharged at points on the specified routes in the territories of third countries, if so agreed by the aeronautical authorities of both Contracting Parties, shall be made in accordance with the general principles that capacity shall be related to:

(a) traffic requirements to and from the territory of the Contracting Party which has designated the airlines;

(b) traffic requirements of the areas through which the airline passes, local and regional air services being taken into account; and

(c) the requirements of through airline operations.

5. The aeronautical authorities of the Contracting Parties shall from time to time jointly determine the practical application of the principles contained in the foregoing paragraphs of this Article for the operation of the agreed services by the designated airlines.

6. The total capacity to be provided on the agreed services by the designated airlines of the Contracting Parties shall be jointly determined in accordance with the above-mentioned principles by the aeronautical authorities of the Contracting Parties before commencement of the operations.

Article 10
Tariffs

1. The tariffs applicable between the territories of the two Contracting Parties shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, the interests of users, reasonable profit, characteristics of service (such as speed and standard of accommodation) and, when it is deemed suitable, the tariffs of other airlines operating over the whole or part of the specified route.

2. The tariffs referred to in paragraph 1 of this Article shall, if possible, be agreed upon between the designated airlines of both Contracting Parties, in consultation when necessary and possible with other airlines operating over the whole or part of the same route. However, a designated airline shall not be precluded from submitting any proposed tariff unilaterally. The tariffs for an agreed service shall be submitted to the aeronautical authorities of both Contracting Parties for approval at least thirty (30) days prior to the proposed date of introduction of these tariffs, unless those aeronautical authorities permit the filing to be made on shorter notice.

3. Tariffs shall become effective after approval by the aeronautical authorities of the Contracting Parties. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 2 of this Article, these tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 2, the aeronautical authorities of the Contracting Parties may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.

4. If a tariff cannot be established in accordance with the provisions of paragraph 3 of this Article, the aeronautical authorities of the two Contracting Parties shall try to determine the tariff by mutual agreement.

5. If the aeronautical authorities cannot agree on the determination of any tariff under paragraph 4 of this Article, the matter shall be referred to the Contracting Parties for settlement in accordance with the provisions of Article 15 of this Agreement.

6. Pending determination of a new tariff in accordance with the provisions of this Article, the tariffs already in force shall prevail.

Article 11
Airline Representatives

1. The designated airline or airlines of one Contracting Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of the other Contracting Party their representatives and commercial, operational and technical staff as required in connection with the operation of agreed services.

2. These staff requirements may, at the option of the designated airline or airlines of one Contracting Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Contracting Party, and authorized to perform such services in the territory of that Contracting Party.

3. The representatives and staff shall be subject to the laws and regulations in force of the other Contracting Party, and, consistent with such laws and regulations, each Contracting Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article.

Article 12
Commercial Opportunities and Transfer of Funds

1. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to sell transportation in freely convertible currencies, and to the same extent any person shall be free to purchase such transportation in currencies accepted for sale by that airline.

2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer at the official rate of exchange of the excess of receipts over expenditure earned by that airline in its territory in connection with the carriage of passengers, mail and cargo.

Article 13
Statistics

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request, such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services.

Article 14
Consultation

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and of its Annex, and shall also consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultation, which may be through discussion or by correspondence and shall begin within a period of sixty (60) days of receipt of a written request, unless both Contracting Parties agree to an extension of this period.

Article 15
Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the

first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body, or either Contracting Party may submit the dispute for decision to a Tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two arbitrators. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given under paragraph 2 of this Article.

Article 16
Modification of Agreement

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of receipt of a written request unless both Contracting Parties agree to an extension of this period. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.

Article 17
Multilateral Convention

This Agreement and its Annexes shall be amended so as to conform with any multilateral convention which may become binding on both Contracting Parties.

Article 18
Termination

Either Contracting Party may at any time give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this

Agreement; such notice shall be communicated simultaneously to the International Civil Aviation Organization. The Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party the notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 19
Registration

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 20
Entry into Force

1. The Contracting Parties shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Agreement have been met.

2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

Done in duplicate at Hanoi on this 17 day of October, 2003 in the English language.

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

Nguyen Tien Sam
Vice Minister of Transportation

FOR THE GOVERNMENT OF NEW ZEALAND

Malcolm John McGoun
Ambassdor to Vietnam

Annex
Route Schedule

1. **Section 1.**

Routes to be operated by the designated airline of New Zealand:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in New Zealand	Three points to be named	Ha Noi Da Nang Ho Chi Minh	One point to be nan

2. **Section 2.**

Routes to be operated by the designated airline of the Socialist Republic of Viet Nam:

Points of Origin	Intermediate Points	Points of Destination	Points Beyond
Points in Viet Nam	Four points to be named	Three points in New Zealand to be named	

Notes:

1. The designated airline of either Contracting Party may, on any or all flights, omit calling at any of the above points, provided that the service on this route starts and terminates in the territory of that Contracting Party.

2. The right of the designated airline of either Contracting Party to transport passengers, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of Third Parties shall be discussed and agreed upon by the aeronautical authorities of the two Contracting Parties.

3. Points on the Route Schedule may be transferred upon six months prior notice to the other Contracting Party. In addition, the number of intermediate points and beyond points may be interchanged, provided the total number of beyond and intermediate points remains the same.

BỘ NGOẠI GIAO

Số : 63/2004 /LPQT

SAO Y BẢN CHÍNH

Hà Nội, ngày 26 tháng 7 năm 2004

TL. BỘ TRƯỞNG BỘ NGOẠI GIAO
KT. Vụ trưởng Vụ Luật pháp và Điều ước quốc tế
Phó Vụ trưởng

Nguyễn Hoàng Anh

Nơi nhận :

- Văn phòng Quốc hội (để báo cáo),
- Văn phòng Chủ tịch nước (để báo cáo),
- Văn phòng Chính phủ (để báo cáo và đăng Công báo)
- Bộ Giao thông – Vận tải,
- Bộ Công an,
- Bộ Quốc phòng (Bộ Tư lệnh phòng không, không quân),
- Bộ Tài chính (Tổng cục hải quan),
- Đại sứ quán CHXHCN Việt Nam tại Niu Di-lân,
- Vụ Châu Á 2, Bộ Ngoại giao,
- Vụ Luật pháp và Điều ước quốc tế, Bộ Ngoại giao,
- Lưu trữ, Bộ Ngoại giao.

Hiệp định vận tải hàng không giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Niu Di-lân có hiệu lực từ ngày 18 tháng 3 năm 2004.