

CODESHARE AGREEMENT

This Codeshare Agreement (the "**Agreement**"), dated as of June 22, 1999, is entered into by and between **Swissair, Swiss Air Transport Company Ltd.**, a corporation organized under the laws of Switzerland ("**Swissair**"), and American Airlines, Inc., a Delaware corporation ("**American**").

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

1. **DEFINITIONS**

- 1.1 Terms used in this Agreement, unless the context otherwise requires or expressly provides, shall have the meanings set forth in Annex A.
- 1.2 The parties agree that accepted industry procedures and agreements relating to the interlining of passengers and baggage, including those set forth in (a) the ATA Resolution 5.65 (Interline Traffic Agreement - Passenger) for carriage solely within and between the United States, Canada, Puerto Rico and the U.S. Virgin Islands; and (b) the IATA Resolution 780 Interline Traffic Agreement - Passenger with respect to all other types of 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 serving the city-pairs identified in Annex B (the "**Codeshare Flight(s)**") on which the parties shall place their respective two letter designator code ("**AA**" for American and "**SR**" for Swissair, each a "**Code**"). Certain flights are further defined in Annex B as AA* Transatlantic Codeshare Flights, AA* Connecting Codeshare Flights, SR* Transatlantic Codeshare Flights, or SR* Connecting Codeshare Flights.
- 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, is 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, as amended and supplemented.
- 2.3 The Operating Carrier for each Codeshare Flight shall provide to the Codeshare 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 and general passenger service procedures and policies for the Codeshare Flights, including baggage services, are detailed in Annex C and the Procedures Manual.

- 2.4 In the event of any flight cancellation or other schedule irregularity, involuntary rerouting or denied boarding by the Operating Carrier with respect to a Codeshare Flight, the Operating Carrier shall (except to the extent such irregularity, involuntary rerouting or denied boarding is caused by the Marketing Carrier):
- (a) ensure that all passengers shall be handled in accordance with the same policies and procedures to avoid any discrimination against a Codeshare Passenger;
 - (b) at its own cost and expense, accommodate and/or pay denied boarding compensation or otherwise compensate Codeshare Passengers, in accordance with and subject to the provisions of the Procedures Manual; and
 - (c) reimburse the Marketing Carrier, in accordance with the Procedures Manual, for all costs incurred by the Marketing Carrier in connection with the compensation and/or accommodation of Codeshare Passengers as a result of a schedule irregularity, involuntary rerouting or denied boarding as contemplated by this Section 2.4.
- 2.5 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 Codeshare 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, including, without limitation, the right to reduce flights, add new flights and discontinue flights.
- 2.6 The Operating Carrier shall employ prudent safety and loss prevention policies on the Codeshare Flights. The Operating Carrier has final authority and responsibility concerning the operation and safety of the aircraft and its passengers. In emergencies, the parties shall adhere to the emergency procedures for Codeshare Passengers set forth in the Procedures Manual.

The Marketing Carrier shall have the right, at its own cost, to review and observe the Operating Carrier's operations of Codeshare 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 Codeshare 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.

- 2.7 The Conditions of Carriage of the Marketing Carrier, including its limits on liability to passengers, shall govern the transportation of Codeshare Passengers, and the Conditions of Carriage of the Operating Carrier, including its limits on liability to passengers, shall apply to those passengers traveling on the Codeshare Flights under the designator 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 The Operating Carrier shall ensure that each Codeshared Flight operated by it shall be operated under its operating certificate. In the event that the Operating Carrier intends to substitute for a Codeshared Flight an aircraft that will be operated under the operating certificate of a third party, including an Affiliate of the Operating Carrier, the Operating Carrier must provide the Marketing Carrier with prior written notice of its intention. Such notice shall be provided to the Marketing Carrier as soon as practicable after it makes its decision regarding the aircraft substitution. The Marketing Carrier shall have the right to (i) accommodate its passengers on the substitute aircraft, or (ii) remove its Code from the Codeshared Flight, and reaccommodate its Codeshared Passengers ticketed for travel on such Codeshared Flight to another flight. The Operating Carrier shall reimburse the Marketing Carrier for all costs of such reaccommodation, including (i) any additional costs incurred to reaccommodate the Codeshared Passenger on a third party carrier acceptable to the Marketing Carrier, on the same route or with a routing that duplicates as closely as practicable, the Codeshared Passenger's original routing, in the same class of service if available, or if not, in a higher class of service, and (ii) any hotel, meal, and other incidental costs associated with the reaccommodation.

3. IMPLEMENTATION EXPENSES

- 3.1 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 by the parties:

- (a) any systems to support the automation of procedures and settlement relating to the Codeshare 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 Codeshare Flights in order to facilitate travel on the Codeshare Flights.

3.2 Each party shall retain all right, title and interest in systems, software, signage, equipment and facilities funded by it. The parties in advance of each specific project shall determine ownership of jointly funded items.

4. **INVENTORY CONTROL AND PROCEDURES**

- 4.1 The Codeshare Flights will be sold through standard interline availability. 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 Codeshare Flights. Detailed procedures for implementing and maintaining seat inventory access are contained in the Procedures Manual.
- 4.2 The parties will map inventory classes of the Marketing Carrier to inventory classes of the Operating Carrier for the Codeshare Flights, as documented in 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 nondiscriminatory 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 the Codeshare Flights. Each party will use commercially reasonable efforts to provide equal inventory access to Codeshare Passengers in inventory classes where such passengers yield comparable revenues as the Operating Carrier's passengers.
- 4.3 Each party shall establish fares and rates independently, subject to the provisions of the applicable air transport agreements between the United States or Switzerland, on the one hand, and the government of any country to which the parties will provide service pursuant to this Agreement, on the other hand.
- 4.4 The parties will each assign individuals to serve as inventory control coordinators, who will, to the extent permitted by applicable governmental

laws, rules and regulations, exchange information routinely and meet as necessary to ensure that the Marketing Carrier shall have seat inventory on Codeshare Flights as described above.

5. **MARKETING AND PRODUCT DISPLAY**

- 5.1 Each party shall ensure that its respective advertising and promotions comply with all applicable governmental laws, rules and regulations. The Marketing Carrier shall comply with 14 C.F.R. Section 399.88 (through July 13, 1999), 14 C.F.R. Parts 257 and 258 (after July 13, 1999), and any other applicable rules regarding the disclosure and holding out of Codeshare Flights provided for herein.
- 5.2 The Marketing Carrier may identify the Codeshare Flights, to the extent permitted by governmental rules and regulations, in Airline Guides, CRSs and Reservations Systems 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 and Reservation Systems shall be borne by the Marketing Carrier. Each party shall include the Codeshare Flights in its internal Reservations Systems.
- 5.3 If the Marketing Carrier is not authorized to offer air transport services in a particular local city pair market, the Marketing Carrier shall file its standard schedule data for the Codeshare Flights using the traffic restriction code "Y" (or any successor code), as defined in the IATA Standard Schedules Information Manual, Appendix G, in order to suppress the display of the Marketing Carrier's Codeshare services in local markets served by the Operating Carrier (i.e., the Marketing Carrier's Codeshare services between such cities will be limited to passengers connecting to another service marketed and/or operated by the Marketing Carrier).
- 5.4 All joint advertising and promotion of the Codeshare 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 The parties shall meet as required to coordinate advertising and sales promotion activities relating to the Codeshare Flights. Unless otherwise agreed, all information and advertising materials produced with the aim of promoting the Codeshare Flights shall clearly identify both parties.
- 5.6 Each party may use its own flight number in referencing the Codeshare 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 Codeshare 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 flight coupons (including coupons from a Marketing Carrier Ticket) honored on Codeshare 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 the normal interline settlement process of the IATA Clearing House. Subject to Section 6.2(b) and (c), Marketing Carrier Tickets shall be deemed to be booked by the Operating Carrier for billing purposes.
 - (b) If the Operating Carrier does not have an interline traffic agreement with a Ticketing Carrier that issued a Marketing Carrier Ticket, the Operating Carrier should bill such coupon to the relevant Ticketing Carrier as an exceptional item (i.e., via correspondence). If the Operating Carrier is unable to obtain satisfactory settlement, the Marketing Carrier shall assist the Operating Carrier in settling such account, and shall be liable for any losses incurred due to an unsatisfactory settlement. In any event, such coupon shall be valued as if issued by the Marketing Carrier for purposes of the Codeshare Commission.
 - (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, at the cost and expense of the Operating Carrier, assist the Operating Carrier in settling such account but shall not be liable for any losses incurred due to an unsatisfactory settlement. In any event, such coupons shall be valued as if issued by the Marketing Carrier for purposes of the Codeshare Commission.
- 6.3 Tickets for connecting itineraries shall be settled pursuant to the Special Prorate Agreement.
- 6.4 The Ticketing Carrier, whether it be the Marketing Carrier or a third party, shall receive the standard industry Interline Service Charge.
- 6.5 The Operating Carrier shall on a monthly basis determine the coupon value of Marketing Carrier Tickets uplifted by it during the previous month for AA* Transatlantic Codeshare Flights or SR* Transatlantic Codeshare Flights and calculate the aggregate commission (the "**Codeshare Commission**") by multiplying such coupon values by the applicable commission percentages set forth in Annex D. The Operating Carrier shall credit the account of the Marketing Carrier for such Codeshare Commission through the IATA Clearing House. The Operating Carrier shall provide supporting data to the Marketing Carrier as soon as such data is available and such Codeshare Commission is calculated, but no later than two (2) months after the end of the month during which the coupons, used to calculate the Codeshare Commission, are uplifted. 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 two (2) months from the date the disputed Codeshare Commission is provided to the Marketing Carrier. Any resulting payments will be processed in accordance with IATA Clearing House rules and procedures.

- 6.6 To support interline billing 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 Tickets. The Marketing Carrier shall, no later than thirty (30) days prior to the initiation of Codeshare Flights, supply the Operating Carrier with written confirmation in a form reasonably satisfactory to the Operating Carrier confirming its blanket waiver of endorsement requirements in connection with Marketing Carrier Tickets.
- 6.7 Differences that may appear after the billing process has been completed shall be rectified by written correspondence or a meeting between the parties.

7. FACILITIES

- 7.1 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 Codeshare Flights. The parties shall mutually agree 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 Codeshare Flights and operations at airports served by the Codeshare Flights, 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 Codeshare Flights, all as more fully described in the Procedures Manual.
- 8.2 The parties shall share any training materials developed to support the Codeshare Flights; provided that the copyright and all other proprietary 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 Codeshare Flights. 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 Codeshare Flights. 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.

10. **MAINTENANCE**

10.1 The Operating Carrier shall have sole responsibility for the maintenance of its leased and owned aircraft and other equipment used in connection with the Codeshare Flights. Maintenance of such aircraft and equipment must, at a minimum, comply with the standards imposed by the relevant aeronautical authorities.

11. **FREE AND REDUCED RATE TRANSPORTATION**

11.1 Unless otherwise provided by relevant agreements between the Operating Carrier and other parties, including the Marketing Carrier, the Marketing Carrier shall not be entitled to ticket travel industry non-revenue or discounted (i.e., AD, ID, etc.) travel on the Codeshare Flights.

12. **FREQUENT FLYER PROGRAMS**

12.1 The Frequent Flyer Participating Carrier Agreements shall govern the participation of each party in the other party's frequent flyer program.

13. **TRADEMARKS AND CORPORATE IDENTIFICATION**

13.1 Each of Swissair and American acknowledges for all purposes that any and all logos, trademarks, service marks and tradenames of the other, whether registered or not, are and shall at all times remain the exclusive property of the other and may not be used without the prior written consent of such party, except as set forth herein. Each of Swissair and American further acknowledges that any goodwill or other rights which 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 tradenames of a party become vested in the other party, such other 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 party without royalties or compensation.

13.2 Each of Swissair 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 ("**Swissair**" for Swissair 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 cooperative air transportation services contemplated by this Agreement.

- 13.3 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 ® or SM or other symbol, as appropriate, and reference a legend indicating that "**Swissair is a service mark of Swissair, Swiss Air Transport Company Ltd.**" or "**American Airlines is a service mark of American Airlines, Inc.**", as the case may be, or similar words to that effect.
- 13.4 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.
- 13.5 Each party has sole discretion to determine the acceptability of both the quality and presentation of advertising and promotional materials using its Licensed Trademark.
- 13.6 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 Swissair 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 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 Government Approvals (to be obtained by it, as indicated in Annex E), 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.

14.2 Each of the foregoing representations and warranties shall survive the execution and delivery of this Agreement.

15. **GOVERNMENTAL APPROVALS**

- 15.1 The Codeshare Flights shall not commence until all 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 Codeshare Flights (collectively, the "**Governmental Approvals**") are received.
- 15.2 If the Governmental Approvals are not obtained with respect to all city-pair markets listed in Annex B, the parties will proceed under this Agreement solely with respect to the approved city-pair markets and the parties may thereafter continue to endeavor to obtain approval of the remaining city-pair markets.
- 15.3 If any of the Governmental Approvals required by the city pair markets listed in Annex B (a) is not obtained within one year of the date of this Agreement, (b) is given with substantial unfavorable restrictions or conditions or (c) is subsequently restricted, suspended or revoked with respect to any Codeshare Flight(s), the parties shall use their collective commercially reasonable efforts to find an equitable solution to enable the commencement or continuation of the affected Codeshare Flight(s). In the event any Governmental Approval, after being granted, is subsequently revoked or materially and adversely altered, the obligations of the parties with respect to the affected Codeshare Flight(s) shall be suspended.

- 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 Codeshare Flights or this Agreement, including with respect to the airworthiness of the aircraft used for the Codeshare Flights or noncompliance by the Operating Carrier with operational, training or safety rules and procedures.

16. **TERM**

- 16.1 The term of this Agreement shall commence on the date hereof and shall continue until terminated pursuant to Sections 16.2 (Termination Events), 21 (Force Majeure), 27 (Severability) or Annexes B (Codeshare Flights), or C (Minimum Standards of Ground and In-Flight Services).

- 16.2 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 second (2nd) anniversary of the Implementation Date by either party upon providing at least 180 days' prior written notice to the other party, such notice to be served no earlier than the end of the 24th full calendar month following the Implementation 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 Section 6 of this Agreement or the failure to otherwise pay any sums due pursuant to this Agreement), including a failure to comply with the obligations and procedures set forth in the Procedures Manual, provided that the non-breaching party provides the breaching party at least thirty (30) days' 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, (i) corrects such breach within fifteen (15) days following receipt of such notice; or (ii) if such breach cannot be corrected in such fifteen (15) day period, takes actions reasonably contemplated to correct such breach and which do correct such breach no later than thirty (30) days following receipt of such notice;
- (d) by the non-breaching party upon the breach of 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 other party, after the non-breaching party provides the breaching party at least fifteen (15) days' prior written notice describing, with as much particularity as practical, the alleged breach and the breaching party does not, within seven (7) days 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 which may have a material adverse effect on it and which is not dismissed, satisfied or stayed within sixty (60) days; 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 under Section 21);
- (f) by either party upon ninety (90) days' prior written notice following receipt by such party of written notice from the other party that such other party has (i) merged with or into any other person or entity, except where such party is the surviving entity and, after such merger, the shareholders of such party continue to own over eighty percent (80%) of the surviving entity's capital stock; (ii) sold or otherwise transferred all or substantially all of its assets to any other person or entity; or (iii) had twenty percent (20%) or more of its capital stock acquired, directly or indirectly, by a third party in one transaction or a series of transactions. 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 Subject to Section 16.4, in the event of termination of this Agreement the Marketing Carrier shall, in its sole discretion, 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 this Agreement.

16.4 In the event that this Agreement is terminated by the Operating Carrier pursuant to Section 16.2(d) or (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 The Operating Carrier shall indemnify, defend and hold harmless the Marketing Carrier and its Affiliates and their respective directors, officers,

employees and agents (individually, 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 be occurring in connection with):

- (a) the death of or injury to persons, or delay or loss of or damage to property (including aircraft, baggage 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 death of or injury to Codeshare Passengers traveling on Marketing Carrier Tickets that implement limits or conditions of liability or jurisdictional rules with respect to passenger claims that differ from those of the Operating Carrier), except to the extent caused by the willful misconduct of a Marketing Carrier Indemnified Party;
- (b) passenger claims based on the Operating Carrier's provision of or failure to provide carriage in conformity with the governing Conditions of Carriage;
- (c) negligent acts or omissions of an Operating Carrier Indemnified Party (defined below) which are in any way related to services contemplated by this Agreement;
- (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 tradenames.

17.2 Subject to the indemnities provided in Section 17.1(a), the Marketing Carrier shall indemnify, defend and hold harmless the Operating Carrier and its Affiliates and their respective directors, officers, employees and agents (individually, an "**Operating Carrier Indemnified Party**") against all Damages (except as provided in Section 17.2(c)) caused by or arising out of (or alleged to be caused by or arising out of):

- (a) the death of or injury to persons, or delay or loss of or damage to property (including aircraft, baggage or cargo) occurring while such persons or property are under the control or in the custody of, or being transported by, the Operating Carrier, to the extent caused by the willful misconduct of a Marketing Carrier Indemnified Party;
- (b) negligent acts or omissions of a Marketing Carrier Indemnified Party which are in any way related to services contemplated under this Agreement, except for Damages of the type referred to in Section 17.1(a) (IN WHICH CASE THE OPERATING CARRIER MUST INDEMNIFY THE MARKETING CARRIER AND OTHER MARKETING CARRIER INDEMNIFIED PARTIES

NOTWITHSTANDING SUCH NEGLIGENT (BUT NOT WILLFUL) ACTS OR OMISSIONS OF A MARKETING CARRIER INDEMNIFIED PARTY);

- (c) passenger claims based on the Marketing Carrier's failure to properly issue and complete transportation documentation in accordance with the provisions of the standard IATA ticketing procedures, including the failure to put a proper notice of the limits of liability under the Warsaw Convention, as amended, on such documentation (it being understood that in ticketing Codeshare 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 17.2(c) for that portion of Damages that are 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;
- (d) the Marketing Carrier's breach 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 Marketing Carrier's logos, trademarks, service marks or tradenames.

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 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 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 twenty (20) days 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 thirty (30) days 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 from and against any and all Taxes, or Assessments, 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 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) airline liability insurance, including general liability, passenger (including Codeshare Passengers and all other revenue and non-revenue passengers), baggage, cargo, mail and aircraft third party legal liability (all policies shall be extended to include war risks, hijacking and allied perils), in an amount not less than Five Hundred Million Dollars (US\$500,000,000) (or other foreign currency equivalent) per any one occurrence. 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 other Marketing Carrier Indemnified Parties as additional insureds, (ii) contain a severability of interest clause and a breach of warranty clause in favor of the Marketing Carrier, and (iii) specifically insure the Operating Carrier's indemnification obligations under this Agreement;

- (b) hull all risk insurance, including war risk, which include a waiver of subrogation in favor of the Marketing Carrier to the extent of the indemnity specified in Section 17.1; and
 - (c) 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 within five (5) Business Days after the effective date of this Agreement and thereafter within five (5) days of the date of any renewal of such coverage. The certificates must indicate that the above coverage shall not be canceled or materially altered without thirty (30) days' advance written notice to the Marketing Carrier and that the Marketing Carrier shall be notified of any expiration or renewal of such coverage. The notice period in respect of war and allied perils coverage shall be seven (7) days or such lesser period as is or may be available in accordance with policy conditions.

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 Marketing Carrier, if it is the Ticketing Carrier, 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, in each case to the extent the Marketing Carrier is the Ticketing Carrier, as follows:
- (a) The Marketing Carrier, if it is the Ticketing Carrier, shall collect, report and remit to the taxing authorities any non-interlineable Ticket Taxes levied in connection with sales of the Codeshare Flights.
 - (b) The Marketing Carrier, if it is the Ticketing Carrier, shall collect, report and credit to the account of the Operating Carrier with the IATA Clearing House any interlineable Ticket Taxes levied in connection with the sales of the Codeshare Flights. The Operating Carrier shall remit to taxing authorities all such interlineable Ticket Taxes.
 - (c) The Operating Carrier may bill the Marketing 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 which should have been collected at the time of ticket sale or travel document issue by the Marketing Carrier.

- (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 Marketing Carrier, if it is the Ticketing Carrier, is prohibited by law from collecting certain Ticket Taxes in the country where tickets are sold or travel documents issued, then the Marketing Carrier is relieved from collecting only such Ticket Taxes so prohibited by law and shall notify the Operating Carrier within thirty (30) days 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 Codeshare Flights may require withholding of Taxes on certain of the payments that either of the parties or their agents (the "**Payer**") 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 Payer shall inform the Payee in writing with at least forty five (45) days' advance notice of its intent to withhold the Taxes and the legal basis for such withholding. The Payer shall inform the Payee:
- (a) within fifteen (15) days of receipt by the Payer of any directives that may be given to the Payer by such taxing authority; and
- (b) within fifteen (15) days of payment by the Payer to the relevant taxing authority the amounts withheld by Payer.
- 19.5 For U.S. income tax purposes, Swissair shall annually and timely furnish American with a duly executed U.S. tax form 4224, 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 a foreign carrier. In the event the Payer is required to withhold taxes under the procedures of Section 19.4, the Payer shall provide to the Payee within thirty (30) days 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 taxing authority with respect to any assessment or potential assessment or imposition of any Tax (collectively, an "**Assessment**"), that the other party may be responsible for paying, directly or indirectly, the party so notified shall inform the other party in writing within ten (10) days of receipt of such notice. If the party receiving such notice from a taxing 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 ALLIANCE COMMITTEE**

- 20.1 Coincident with the execution of this Agreement, American and Swissair will create a Joint Alliance Committee (the "**Committee**"). American and Swissair will each designate two (2) 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 semi-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. Each agenda will be compiled, provided, and distributed by the management designees of American.
- 20.2 From time to time, as the Committee deems appropriate, the Committee may establish and oversee working groups, which will be responsible for executing certain aspects of the responsibilities described in Section 20.3. These working groups will be composed of members in equal number from each party and will meet as frequently as necessary to accomplish their assigned responsibilities.
- 20.3 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 Swissair, and their respective airline Affiliates. The Committee will, as part of its responsibilities, monitor customer service quality, system development, performance of Codeshare 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 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 Swissair 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. The Committee will resolve any differences between the parties on a fair and amicable basis; in the event it is unable to do so, the Committee members shall refer disputes to senior management in their respective companies, in accordance with the dispute resolution procedures of Section 22.2. In performing its responsibilities, the Committee will be mindful of, and will comply with, all laws and regulations applicable to American and Swissair,

including, without limitation, laws and regulations governing competition between American and Swissair. Through the Committee, American and Swissair and their respective Affiliates will pursue all areas of cooperation that may reasonably be expected to result in lower costs or revenue increases. These areas 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 Swissair and their respective Affiliates.

21. **FORCE MAJEURE**

Except with respect to the performance of payment obligations 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, 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 thirty (30) days or longer, the non-delayed party shall have the right, at its option, to terminate this Agreement by giving the delayed party at least thirty (30) days' prior written notice.

22. **GOVERNING LAW AND ARBITRATION**

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 **DISPUTE RESOLUTION**

- (a) Except as otherwise expressly provided in Section 25.2, any controversy, dispute, difference, disagreement or claim between American and Swissair arising under or relating to this Agreement (a "**Dispute**"), including any question concerning the validity, termination, interpretation, performance, operation, enforcement or breach of this Agreement, must first be referred by either party to, and for resolution by, the Committee. If the Committee is unable to resolve the Dispute within forty-five (45) days after the Dispute is referred to it, unless extended by mutual consent of the parties, the Dispute must then be referred by both parties for resolution by the respective Presidents of the parties within an additional thirty (30) days. It will be sufficient for the purposes of referrals under this Section 22.2(a) that a party send notice of the Dispute to one of its own members of the Committee or its own President, as the case may be, with a copy to the other party.
- (b) Any Disputes not resolved after referral to the Committee and subsequently to the Presidents of the parties as required in Section

22.2(a), may then be referred to arbitration as provided in Section 22.2(c). Each of Swissair and American irrevocably submits to the exclusive jurisdiction of such arbitration and expressly and irrevocably waives its rights to bring suit against the other party in any court of law except for the limited purposes of enforcing an arbitral award obtained in respect of a Dispute, or for obtaining any injunctive, temporary or preventative order or similar order available to it under the laws of any jurisdiction for a breach or threatened breach by the other party of this Agreement which threatens irreparable damage. Each party, to the fullest extent it may effectively do so under substantive governing law applicable to this Agreement, irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to arbitration.

- (c) Any Dispute submitted for arbitration must be finally settled by binding and confidential arbitration according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "ICC") as in effect at the time of the submission of the Dispute to the ICC (the "**Rules**"), except as modified by mutual agreement of Swissair and American. In the event of a conflict between the Rules and this Section 22, the provisions of this Section 22 will prevail. The arbitration, including the rendering of the award, will be conducted by three (3) arbitrators, each of whom will be knowledgeable about the legal, marketing and other business aspects of the airline industry and fluent in the English language; except that the arbitration may be conducted by only one arbitrator if Swissair and American agree in advance of the arbitration on a mutually acceptable individual. The arbitrator(s) will be appointed in accordance with the Rules. The arbitration proceedings will take place in San Francisco, California, and will be conducted in the English language. The cost of such arbitration shall be borne as allocated by the arbitrators or, if no such allocation is made, by the party that does not prevail in the proceeding. Nothing herein set forth shall prevent the parties from settling any dispute by mutual agreement at any time.
- (d) If there is a Dispute submitted to arbitration, any subsequent additional Disputes referred for arbitration (including counterclaims between the parties) will be consolidated in the same arbitration proceeding.
- (e) The arbitral proceeding will not exceed ninety (90) days commencing on the date that the last arbitrator accepts his or her appointment. If the arbitral award is not issued within this time, then the arbitration proceeding will be automatically renewed for another ninety (90) days. Evidence may not be taken in the arbitral proceeding except in the presence of both parties and all witnesses, if any, may be questioned by both parties.

- 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 American 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 1633 Broadway, New York, NY 10019, and Swissair designates, appoints, authorizes and empowers as its agent for service of process the Swissair department of Legal & Government Affairs - North America at its offices currently located at 41 Pinelawn Road, Melville, NY 11747-8910, 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 (except as limited in Section 22.2) or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.
- 22.5 Swissair 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. **COVENANT TO COMPLY WITH ALL LAWS**

- 23.1 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, Switzerland, 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, and the U.S. Department of Defense and the counterpart agencies in Switzerland. Swissair further agrees to participate in the Advance Passenger Information System ("**APIS**") program (on terms consistent with those currently in effect for other non-U.S. carriers) whereby Swissair will, upon request, supply the U.S. Immigration and Naturalization Service with the required passenger manifest data from its flight(s) bound for the United States at the time of departure.
- 23.2 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**

- 24.1 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 Except as necessary to obtain any Government Approvals or as otherwise provided below, 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. 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 governmental body, it shall (a) notify the Affected Party immediately of the existence, terms and circumstances surrounding such request, (b) consult with the Affected Party on the advisability of taking legally available steps to resist or narrow such request and (c) if any disclosure of Confidential Information is required to prevent the Disclosing Party from being held in contempt or subject to other legal penalty, furnish only such portion of the Confidential Information as it is legally compelled to disclose and use commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the disclosed Confidential

Information. 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 25.1.

- (a) Within ninety (90) days 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.

25.2 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.

25.3 The confidential obligations of the parties under this Section 25 shall survive the termination of this Agreement.

26. **ASSIGNMENT**

26.1 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 Swissair 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 Swissair of any of its obligations under this Agreement.

27. **SEVERABILITY**

27.1 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 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 ninety (90) days 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 thirty (30) days' prior written notice to the other party.

28. **EXCLUSIVITY AND RELATIONSHIP OF THE PARTIES**

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, Swissair shall not, and shall cause Swissair Affiliates not to:
 - (i) place the Swissair designator code or any Swissair Affiliate's designator code, on any flight operated by any air carrier domiciled in the United States (other than American and American Affiliates), which, as of the date hereof, (1) has an existing codesharing or alliance relationship, or (2) has a pending application for governmental approval to establish such a relationship, with a European carrier domiciled in any country that is contiguous to Switzerland, if such European carrier is the largest carrier in such contiguous country (such United States domiciled carriers hereinafter referred to as the "Specified Carriers"), without American's prior written consent; or
 - (ii) permit any of the Specified Carriers to place its designator code on any flight operated by Swissair or Swissair Affiliates, without American's prior written consent; or
 - (iii) place the Swissair designator code or any Swissair Affiliate's designator code, on any flight to, from, via or within the United States, other than flights operated by (1) Swissair, (2) Swissair Affiliates, (3) any European domiciled carriers that are currently members of or that join the Qualiflyer Group alliance ("Swissair Marketing Affiliates"), (4) American, (5) American Affiliates and (6) those United States domiciled carriers that are not Specified Carriers, without American's prior written consent; or
 - (iv) permit any carrier, other than (1) those United States domiciled carriers that are not Specified Carriers and (2) the Swissair Marketing Affiliates, to place its designator code on any flight to, from, via or within the United States, operated by Swissair or Swissair Affiliates, without American's prior written consent.

- (b) During the term of this Agreement, American shall not, and shall cause American Affiliates not to:
 - (i) place the American designator code or any American Affiliate's designator code on any flight operated by any air carrier domiciled in Switzerland, other than Swissair and Swissair Affiliates, without Swissair's prior written consent; or
 - (ii) permit any air carrier domiciled in Switzerland, other than Swissair and Swissair Affiliates, to place its designator code on any flight operated by American or any American Affiliate, without Swissair's prior written consent; or
 - (iii) place the American designator code or any American Affiliate's designator code, on any flight to, from, via or within Switzerland, other than flights operated by (1) American, (2) American Affiliates, (3) any carriers that are currently members of or that join the **oneworld™** alliance ("American Marketing Affiliates"), (4) Swissair and (5) Swissair Affiliates, without Swissair's prior written consent; or
 - (iv) permit any air carrier, other than (1) Swissair, (2) Swissair Affiliates and (3) American Marketing Affiliates, to place its designator code on any flight to, from, via or within Switzerland operated by American or American Affiliates, without Swissair's prior written consent.

28.2 The foregoing Section 28.1 shall not apply to:

- (a) codeshare agreements currently in force, or future modifications thereof, between each of Swissair and American and third parties.
- (b) codeshare agreements with air carriers that provide only air cargo services (i.e., no commercial passenger air transport services).

28.3 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 Codeshare Flight, including any employees, agents or contractors of the Marketing Carrier who are on board any such flight).

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 laws, rules or regulations or as may be reasonably requested by the other to carry out and effectuate the purposes of this Agreement.

30. **NOTICES**

30.1 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) three (3) Business Days after dispatch, if dispatched by a recognized express delivery service which provides signed acknowledgments of receipt; (iii) seven (7) Business Days after deposit in the applicable postal service delivery system; or (iv) if transmitted by facsimile, upon completion of transmission and upon confirmation by the sender (by a telephone call to a representative of the recipient or by machine confirmation) that the transmission was received. 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 three (3) Business Days prior written notice to the other party in the manner set forth above.

If to American: 4333 Amon Carter Blvd., MD5635
Fort Worth, Texas 76155
Attention: Vice President, International Affairs
Facsimile: 817-967-3179
Telephone: 817-931-1730

If to Swissair: CH-8058 Zurich - Airport
Switzerland
Attention: Executive Vice President
Alliances Qualiflyer Group / North Atlantic
Facsimile: 41-1-812-9029
Telephone: 41-1-812-4024

31. **MISCELLANEOUS**

31.1 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.

31.2 In the event that there occurs a substantial change in market conditions in general or in the condition of either party, which change or changes are

not substantially the result of an act or omission of the party requesting a change or amendment to this Agreement and which change or changes have a material adverse effect on either party to this Agreement, then American or Swissair 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 Swissair will have any obligation, for any reason, to effect such an amendment.

- 31.3 Unless otherwise expressly required in this Agreement, all notices, reports, invoices and other communications required or permitted to be given to or made upon a party to this Agreement shall be given in accordance with the procedures set forth in the Procedures Manual.
- 31.4 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.
- 31.5 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.
- 31.6 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.
- 31.7 This Agreement is the product of negotiations between Swissair 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.
- 31.8 Although translations of this Agreement may be made into French, German or 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.

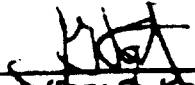
31.9 NEITHER PARTY SHALL BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES, LOST PROFITS OR LOST PROSPECTIVE ECONOMIC ADVANTAGE, ARISING FROM ANY PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE 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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the date first indicated above.

**Swissair, Swiss Air Transport
Company Ltd.**

American Airlines, Inc.

By: 
Name: Jeffrey G. Katz
Title: President and
Chief Executive Officer

By: 
Name: Arnold J. Grossman
Title: Vice President-International Affairs

By: 
Name: Michael Eggenachwiler
Title: Executive Vice President
Alliances Qualifier Group / North Atlantic

Attachments:

- Annex A - Definitions
- Annex B - Codeshare City-Pair Routes
- Annex C - Minimum Standards of Ground and In-Flight Services
- Annex D - Financial Settlement
- Annex E - Governmental Approvals