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**CODESHARE AGREEMENT**

**between**

**AMERICAN AIRLINES, INC.**

**and**

**COMPAÑIA MEXICANA DE AVIACION, S.A. DE C.V.**

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## CODESHARE AGREEMENT

This CODESHARE AGREEMENT (this “**Agreement**”), dated as of January 21, 2004, is entered into by and between American Airlines, Inc., a corporation organized under the laws of the State of Delaware, United States of America, having its principal office at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155, United States of America (“**American**”), and **Compañía Mexicana de Aviación, S.A. de C.V.**, a corporation organized under the laws of the United Mexican States (“**Mexico**”), with its principal office at Xola 535, 15th Floor, Colonia del Valle 03100, Mexico, D.F. Mexico (“**Mexicana**”).

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

### 1. DEFINITIONS

- 1.1. Capitalized terms used in this Agreement shall have the meanings set forth in Annex A, unless the context expressly provides otherwise.
- 1.2. The parties agree that accepted industry procedures and agreements relating to the interlining of passengers and baggage, including those set forth in IATA Resolution 780 Interline Traffic Agreement – Passenger for all international carriage shall apply to the provision of air transport and the related transactions contemplated by this Agreement, except to the extent that they are inconsistent or conflict with the terms of this Agreement.

### 2. CODESHARE SERVICE

- 2.1. The parties shall mutually designate certain flights (each, a “**Codeshared Flight**”) serving the city-pairs identified in Annex B (each a “**Codeshared Route**”), on which the parties shall place their respective Code (“AA” for American and “MX” for Mexicana). The parties intend to implement the planned codesharing in multiple phases subject to obtaining all required Governmental Approvals.
- 2.2. Detailed procedures for implementing this Agreement will be set forth in the Procedures Manual, which will be prepared by the parties in conjunction with this Agreement. The Procedures Manual, including any amendments or supplements thereto agreed in writing between the parties from time to time, shall be incorporated by reference into and made a part of this Agreement; provided, however, that the terms of this Agreement shall prevail in the event of a conflict between a provision of this Agreement and any provision of the Procedures Manual.
- 2.3. The Operating Carrier for each Codeshared Flight shall provide to the Codeshared Passengers, at a minimum, the same standard of customer service as it provides to its own passengers traveling in the same class of service, which standard shall, in any event, be reasonably in accordance with the standards of customer service established by the Marketing Carrier for the comparable class of service on its flights. Minimum customer service standards, general passenger service procedures, and policies for the Codeshared Flights, including baggage services, are detailed in Annex C and the Procedures Manual.
- 2.4. The parties shall use commercially reasonable efforts to coordinate their service schedules to maximize the convenience, and minimize the waiting time of passengers

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making connections between the Codeshared Flights and other flights operated by the parties; provided, however, that neither party is obligated to operate specific flights or service schedules and each party retains the right to determine the service schedules of its own flights. To ensure a high standard of passenger service, the parties agree that the dependability and the operation completion factor for Codeshared Flights must meet the minimum standards set forth in Annex D and the Procedures Manual.

- 2.5. The parties may add Codeshared Flights, as may be mutually agreed, without formally amending this Agreement. Either party may, in its sole discretion, discontinue Codeshared Flights without formally amending this Agreement. Such changes shall be evidenced by the Marketing Carrier publishing such changes in the Airline Guides, CRSs, or Reservations Systems. The Operating Carrier reserves the right to discontinue any specific route, flight or schedule. In the event of such discontinuation, the Operating Carrier shall notify the Marketing Carrier and the Marketing Carrier shall cooperate in publishing the resulting changes to affected Codeshared Flights in the Airline Guides, CRSs, Reservations Systems, and other sources of airline schedule information.
- 2.6. Except as otherwise provided in the Procedures Manual, in the event of any flight cancellation or other schedule irregularity, involuntary rerouting or denied boarding by the Operating Carrier with respect to a Codeshared Flight, the Operating Carrier shall:
- (a) ensure that all passengers shall be handled in accordance with the same policies and procedures to avoid any discrimination against a Codeshared Passenger;
  - (b) at its own cost and expense (except to the extent such irregularity, involuntary rerouting or denied boarding is caused by the Marketing Carrier), accommodate and/or pay denied boarding compensation or otherwise compensate Codeshared Passengers, in accordance with and subject to the provisions of the Procedures Manual.
- 2.7. The Conditions of Carriage of the Marketing Carrier, including its limits of liability to passengers, shall govern the transportation of Codeshared Passengers, and the Conditions of Carriage of the Operating Carrier, including its limits of liability to passengers, shall apply to those passengers traveling on the Codeshared Flights under the Code of the Operating Carrier. The respective Conditions of Carriage of the parties shall be notified to the passengers to the extent and in the manner required by applicable law, rules and regulations. Notwithstanding anything in this Section 2.7, the liability of the parties to each other with respect to passenger claims shall be governed by Sections 16 and 17.
- 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 the Operating Carrier makes its decision regarding the aircraft substitution. The Marketing Carrier shall have the right, should it elect to do so, 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 reasonable 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

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available, or if not, in a higher class of service, and (ii) any reasonable 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:
- (a) any systems to support the automation of procedures and settlement relating to the Codeshared Flights (e.g., PNR exchange, yield management, revenue accounting, etc.), including routine maintenance thereof, unless otherwise agreed in writing by the parties, and;
  - (b) subject to Section 6 of Annex C, roadside, exterior, check-in, concourse, gate and baggage service signage placed at airports and city ticket offices in locations served by the Codeshared Flights in order to facilitate travel on the Codeshared Flights.
- 3.2. Each party shall retain all right, title and interest in systems, software, signage, equipment and facilities funded by it. Ownership of jointly funded items shall be determined by the parties in advance of each specific project.

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

- 4.1. The availability of Marketing Flights will be controlled by standard AVS (availability status) of the Operating Carrier. The Marketing Carrier will have access to the Operating Carrier's local inventory class availability through an automated computerized interface, which both parties will maintain throughout the term of this Agreement, to expedite the sale of seat inventory on the Codeshared Flights. Detailed procedures for implementing and maintaining seat inventory access are contained in the Procedures Manual.
- 4.2. The parties will map inventory classes of the Marketing Carrier to inventory classes of the Operating Carrier for the Codeshared Flights, in accordance with the Procedures Manual. The parties will endeavour to map the average coupon value of the Marketing Carrier's inventory classes to comparable classes of the Operating Carrier to provide similar access for bookings made by the Marketing Carrier for passengers yielding comparable revenue values; it being understood, however, that the Operating Carrier retains ultimate control over the opening, closing and other management of seat inventory availability on Codeshared Flights.
- 4.3. Each party shall use commercially reasonable efforts to provide equal inventory access to Codeshared Passengers in inventory classes where such passengers yield comparable revenues as the Operating Carrier's passengers.
- 4.4. This Section 4.4 shall govern the published fares of the Marketing Carrier offered on Codeshare Flights as follows:
- (a) On routes served online by only one of the two airlines, the Marketing Carrier's fares must be the same as the Operating Carrier's fares.
  - (b) On routes served online by both airlines, or by neither airline online, each airline will continue to independently set and offer its own fares for the service it operates or offers; further provided that each airline shall have the right, in its own discretion and as the Operating Carrier, to non-concur to any fare (and/or fare rule) of the Marketing Carrier offered on Codeshare Flights of the Operating Carrier, and further provided that upon written notice of non-concurrence by the

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Operating Carrier, the Marketing Carrier shall immediately withdraw from service of the Operating Carrier the fare(s) (and/or fare rule(s)) specified in the notice.

- (c) In the event of breach of any of the aforementioned conditions, the Operating Carrier shall have the right, in its sole discretion, after one day from the notice of non-concurrence to restrict or close altogether the inventory access of the Marketing Carrier or remove the code of the Marketing Carrier, or to temporarily remove the Operating Carrier's code on the Marketing Carrier's flights.
- (d) Provided, however, that nothing in this agreement shall prevent the Marketing Carrier from (i) initiating and operating its own service in any origin and destination city pair at any time; or (ii) offering any fare(s), discount(s) or rebate(s) of any kind for interline itineraries valid on airlines, other than American or Mexicana, on any origin and destination city pair.

4.5. Each party shall establish fares and rates independently, subject to the provisions of the applicable air transport agreements between the United States and Mexico, on the one hand, and the governments of any country to which the parties shall provide service pursuant to this Agreement, on the other hand.

## **5. MARKETING AND PRODUCT DISPLAY**

- 5.1. The Codeshared Flights will be marketed and promoted by the Marketing Carrier under its Code. Each party shall ensure that its respective advertising and promotions comply with all applicable governmental laws, rules and regulations of any applicable Competent Authority. The Marketing Carrier shall comply with 14 C.F.R. Parts 257 and 258, and any other applicable rules regarding the disclosure and holding out of Codeshared Flights provided for herein.
- 5.2. The Marketing Carrier may identify the Codeshared Flights, to the extent permitted by governmental rules and regulations, in Airline Guides, CRSs, Reservations Systems and other sources of airline schedule information using the Marketing Carrier's Code. Any costs incurred for the publication of Marketing Flights or connections to and from such flights in Airline Guides, CRSs, Reservation Systems and other sources of airline schedule information shall be borne by the Marketing Carrier. Each party shall include the Codeshared Flights in its Reservations Systems.
- 5.3. If the Marketing Carrier is not authorized to offer air transport services in a particular local Codeshared Route, the Marketing Carrier shall file its standard schedule data for the Codeshared Flights in such Codeshared Route using the traffic restriction code "O" or "Y" (or any successor code), as appropriate, as defined in the IATA Standard Schedules Information Manual, Appendix G, in order to suppress the display of the Marketing Carrier's Codeshared Flights on such local Codeshared Routes (i.e., the Marketing Carrier's Codeshared Flights on such route will be limited to passengers connecting online to another flight marketed and/or operated by the Marketing Carrier).
- 5.4. Each party may use its own flight number in referencing the Codeshared Flights except that only the Operating Carrier's flight number shall be used in actual flight operations (e.g., air traffic control).

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## 6. TRAFFIC DOCUMENT ISSUANCE AND FINANCIAL SETTLEMENT

- 6.1. Passenger traffic documents for use on the Codeshared Flights may be issued by either party, or by third parties with whom the parties from time to time have interline traffic agreements.
- 6.2. All Marketing Carrier Flight Coupons honored on Codeshared Flights shall be uplifted by the Operating Carrier, which is responsible for processing and billing of such documents as follows:
  - (a) The Operating Carrier shall bill uplifted coupons to the Ticketing Carrier using the normal interline settlement process of the Airline Clearing House. Subject to Section 6.2(b) and 6.2(c), Marketing Carrier Flight Coupons shall be treated for proration and billing purposes as if they showed the Operating Carrier's Designator Code in the carrier Code box of the Marketing Carrier Flight Coupons. Such Marketing Carrier Flight Coupons will be prorated and billed according to the special prorate agreement between the Operating Carrier and the Ticketing Carrier, or, in the absence of an applicable special prorate agreement, in accordance with the IATA Prorate Manual-Passenger ("IATA PMP"), as applicable.
  - (b) If the Operating Carrier does not have an interline traffic agreement with a Ticketing Carrier that issued a Marketing Carrier Ticket, and is unable to obtain satisfactory settlement, the Operating Carrier may bill such coupon to the Marketing Carrier as an exceptional item (i.e., via correspondence) and such coupons shall be valued for billing and proration purposes according to the IATA Prorate Manual.
  - (c) If the Operating Carrier has an interline traffic agreement with a Ticketing Carrier that issued a Marketing Carrier Ticket but is unable to obtain satisfactory settlement, the Marketing Carrier shall assist the Operating Carrier in settling such account but shall not be liable for any losses incurred due to an unsatisfactory settlement.
- 6.3. For Codeshared Flights between the United States and Mexico only, the Operating Carrier shall on a monthly basis determine the gross prorated value (as determined in accordance with Section 6.2(a)) of Marketing Carrier Flight Coupons uplifted by it during the previous month and calculate the commission (the "**Codeshare Commission**") by multiplying such coupon values by the applicable commission percentages set forth in Annex E. The Operating Carrier shall credit the account of the Marketing Carrier for the aggregate Codeshare Commission through the Airline Clearing House. The Operating Carrier shall provide supporting data to the Marketing Carrier no later than thirty (30) days after the end of the clearance month (e.g., if the Operating Carrier were to issue an October 2004 clearance month credit to the marketing Carrier on November 23, 2004, then supporting data should be provided to the Marketing Carrier by November 30, 2004). 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 nine (9) months from the relevant clearance month. Any resulting payments will be processed through the Airline Clearing House.
- 6.4. The Ticketing Carrier, whether it be the Marketing Carrier, the Operating Carrier or a third-party, shall receive the standard industry Interline Service Charge and/or ticket handling fee, as may be appropriate.

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- 6.5. To support interline billing by the Operating Carrier to third parties and involuntary rerouting and refunding of Marketing Carrier Tickets by the Operating Carrier, the Marketing Carrier hereby waives endorsement requirements for the Operating Carrier with respect to all Marketing Carrier Flight Coupons, including: (i) all Marketing Carrier Flight Coupons for use on Codeshared Flights operated by Mexicana between the United States and Mexico, or within Mexico, issued on American-AA (001) ticket stock, or on other ticket stock, but naming American in the carrier code box, and (ii) all Marketing Carrier Flight Coupons for use on Codeshared Flights operated by American between the United States and Mexico, or within the United States, or between the United States and other international points, issued on Mexicana (132) ticket stock, or on other ticket stock, but naming Mexicana in the carrier code box. Unless otherwise agreed in writing by the parties, such waiver shall be effective thirty (30) days before the implementation date of the first Codeshared Flight, and shall remain in effect for ninety (90) days after the termination of this Agreement to facilitate the reaccommodation of any Codeshared Passengers ticketed for travel after the termination date.
  - 6.6. Differences that may appear after the billing process has been completed shall be rectified by written correspondence or a meeting between the Parties.
  - 6.7. Prior to the first Codeshared Flight, the Marketing carrier will file with the ATPCO a TCN Codeshare Agreement, in which the Marketing Carrier will provide the range of Marketing Flight numbers. The Marketing Carrier will be responsible, throughout the term of the Codeshare Agreement, for updating the Marketing Flight numbers with ATPCO.

## **7. TRAINING**

- 7.1. Except as otherwise agreed, each party shall provide or arrange, at its own cost and expense, all initial and recurring training of its personnel to facilitate the Codeshared Flights and operations at airports served by the Codeshared Flights, including reservations and ticket offices, and other points of contact between the parties and the public. This training shall include passenger service, reservations and sales activities, and in-flight service involving the Codeshared Flights, all as more fully described in the Procedures Manual.
- 7.2. The parties shall share any training materials developed to support the Codeshared Flights. All proprietary rights to any materials exchanged shall remain with the party who originally developed such materials.

## **8. SECURITY**

- 8.1. The parties shall cooperate in matters of security procedures, requirements, and obligations at all airports served by the Codeshared Flights.
- 8.2. The Operating Carrier reserves the right to apply the provisions of its own security programs to the carriage of all passengers, baggage and cargo on board the Codeshared Flights, but shall, at a minimum, comply with the standards set forth by the relevant Competent Authorities and be reasonably acceptable to the Marketing Carrier, with the understanding that safety and security are of the utmost importance to both carriers. Such provisions may include any then applicable procedures used for the physical screening of passengers, baggage or cargo, interviewing of passengers, and/or selective loading of baggage or cargo.



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**9. SAFETY AND MAINTENANCE**

- 9.1. The Operating Carrier shall have sole responsibility for the maintenance of its leased and owned aircraft, and for other equipment used in connection with the Codeshared Flights. Maintenance of such aircraft and equipment must, at a minimum, comply with the standards imposed by the relevant aeronautical authorities.
- 9.2. The Marketing Carrier shall have the right, at its own cost, to review and observe the Operating Carrier's operations of Codeshared Flights, and/or to conduct a reasonable safety and/or service review of the Operating Carrier's operations, manuals, and procedures reasonably related to the Codeshared Flights (the "**Marketing Carrier Reviews**"), at such intervals as the Marketing Carrier shall reasonably request. The Marketing Carrier Reviews shall be coordinated with the Operating Carrier so as to avoid disruptions to the Operating Carrier's operations. Such reviews will be limited to areas that reasonably relate to the Operating Carrier's safety standards and service obligations under this Agreement. **NOTWITHSTANDING THE FOREGOING, THE MARKETING CARRIER DOES NOT UNDERTAKE ANY RESPONSIBILITY OR ASSUME ANY LIABILITY FOR ANY ASPECT OF THE OPERATING CARRIER'S OPERATIONS, NOR SHALL THE OPERATING CARRIER BE ENTITLED TO ASSERT ANY RESPONSIBILITY OR ASSUMPTION OF LIABILITY ON THE PART OF THE MARKETING CARRIER FOR THE OPERATING CARRIER'S OPERATIONS.**
- 9.3. The Operating Carrier shall employ prudent safety and loss prevention policies on the Codeshared 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. In addition, prior to the first Codeshared Flight the parties will implement a Mutual Emergency Assistance Agreement.

**10. FREE AND REDUCED RATE TRANSPORTATION**

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

**11. OTHER MARKETING PROGRAMS**

- 11.1. The Frequent Flyer Participating Carrier Agreements shall govern the participation of each party in the other party's frequent flyer program.
- 11.2. The parties will provide the Marketing Carrier's First and Business Class Codeshared Passengers with access to the Operating Carrier's airport lounge on the day of their departure pursuant to the Lounge Access Agreement to be negotiated by the parties in good faith. In the case of First and Business Class Codeshared Passengers traveling under Mexicana's Code, access will be provided to Admirals Clubs on the day of their departure. Similarly, First and Business Class Codeshared Passengers traveling under American's Code will have access to the Salon Ejecutivo (and other premium class lounges that Mexicana may currently have or hereafter develop) on the day of their

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departure. Each party will be required to pay the other a per capita fee for such lounge access.

## 12. TRADEMARKS AND CORPORATE IDENTIFICATION

- 12.1. Each of Mexicana and American acknowledges for all purposes that any and all logos, trademarks, service marks, and trade names of the other, whether registered or not, are and shall at all times remain the exclusive property of the other party, and may not be used without the prior written consent of such party, except as set forth herein. Each of Mexicana and American further acknowledges that any goodwill or other rights that arise as a result of the use by it of the other party's marks, as permitted under this Agreement, shall accrue solely to the benefit of the party owning such marks, whether registered or not. Should any right, title or interest in the logos, trademarks, service marks or trade names of a party become vested in the other party, the latter party shall hold such right, title and interest in trust for the benefit of the former party and shall, at the request of the former party, promptly and unconditionally assign such right, title and interest to the former party without royalties or compensation of any kind.
- 12.2. Each of Mexicana 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 ("**Mexicana**" for Mexicana and "**American Airlines**" for American, each a "**Licensed Trademark**"), subject to the terms and conditions set forth in this Section 12. This license is exclusively limited to the use of the Licensed Trademarks in connection with the advertising and promotion of the Codeshared Flights contemplated by this Agreement and the Frequent Flyer Participating Carrier Agreements.
- 12.3. 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 <sup>SM</sup> or other symbol, as appropriate, and reference a legend indicating that "**Mexicana is a service mark of Compañía Mexicana de Aviación, S.A. de C.V.**" or "**American Airlines is a service mark of American Airlines, Inc.**", as the case may be, or similar words to that effect.
- 12.4. 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.
- 12.5. Each party has sole discretion to determine the acceptability of both the quality and presentation of advertising and promotional materials using its Licensed Trademark.
- 12.6. Each party is responsible for providing to its own authorized agents and airport locations the agreed promotional materials bearing the Licensed Trademarks.

## 13. REPRESENTATIONS AND WARRANTIES

- 13.1. Each of Mexicana 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

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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 (at such time as performance is required) by it of this Agreement, shall not: (i) contravene, conflict with or cause a default under (A) any applicable law, rule or regulation binding on it, or (B) any provision of its Charter, Certificate of Incorporation, Bylaws or other documents of corporate governance; or (ii) contravene, or cause a breach or violation of, any agreement or instrument to which it is a party or by which it is bound, except where such conflict, contravention or breach would not have a material adverse effect on it and its Affiliates, or on the operations of it or its Affiliates, taken as a whole or on its ability to perform this Agreement.
- (c) The execution, delivery and performance by it of this Agreement do not require the consent or approval of, or the giving of notice to, the registration with, the recording or filing of any documents with, or the taking of any other action in respect of, any Competent Authority, any trustee or holder of any of its indebtedness or obligations, any stockholder or any other person or entity, other than the Governmental Approvals (to be obtained by it, as indicated in [Annex F](#)), except where failure to obtain or take such action would not have a material adverse effect on it or a material adverse effect on the transactions contemplated in this Agreement.

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

#### **14. GOVERNMENTAL APPROVALS**

- 14.1. The Codeshared Flights shall not commence until all required Governmental Approvals are received. Each party shall use all commercially reasonable efforts to obtain those Governmental Approvals for which it has been allocated responsibility under [Annex F](#), and any other Governmental Approvals that may hereafter be identified.
- 14.2. If the Governmental Approvals are obtained with respect to some but not all of the Codeshared Routes listed in [Annex B](#), the parties may elect to proceed under this Agreement solely with respect to the approved Codeshared Routes, and the parties shall thereafter continue to endeavor to obtain approval of the remaining city-pair markets.
- 14.3. If the parties obtain none of the Governmental Approvals required for the Codeshared Routes listed in [Annex B](#) within [ *Redacted* ] days of the date of this Agreement, or if all of such Governmental Approvals are given with substantial unfavorable restrictions or conditions (each party to determine in its sole discretion the reasonableness of such restrictions or conditions), the parties shall negotiate in good faith to find an equitable solution to enable the commencement of the Codeshared Route(s). If a solution cannot be formulated within ninety (90) days following commencement of such negotiations, either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party.
- 14.4. Each party shall immediately provide the other party with copies of any correspondence or notices it receives from any Competent Authority with respect to the Codeshared

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Routes, Codeshared Flights or this Agreement, including with respect to the airworthiness of the aircraft used for the Codeshared Flights or noncompliance by the Operating Carrier with operational, training or safety rules and procedures where such correspondence or notice alleges a failure or non-compliance of a type that would entitle a party to suspend performance or take other action under Section 15.2(g).

**15. TERM**

- 15.1. The term of this Agreement shall commence on the later of i) April 1, 2004, and ii) the date all required Governmental Approvals are received (the “**Commencement Date**”) and shall continue for a term of [ **Redacted** ] years, unless terminated earlier pursuant to Section 14.3 (Governmental Approval), Section 15.2 (Termination Events), Section 20 (Force Majeure) or Section 26 (Severability), [Annex B](#) (Codeshared Flights), [Annex C](#) (Ground/In-Flight Services) or [Annex D](#) (Operating and Dependability).
- 15.2. 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 [ **Redacted** ] anniversary of the Commencement Date by either party upon providing at least two hundred ten (210) days prior written notice to the other party, provided that such written notice of termination shall (i) be given no earlier than the end of the twelfth (12th) full calendar month following the Commencement Date and (ii) the effective date of termination shall be as stated in such written notice of termination but not earlier than two hundred ten (210) days following receipt of such written notice.
  - (c) by the non-breaching party upon the breach of a material term, covenant, representation or warranty of i) this Agreement (other than a breach of a payment obligation under Section 6 of this Agreement or the failure to otherwise pay any sums due pursuant to this Agreement), including a failure to comply with any material obligations and procedures set forth in the Procedures Manual, ii) or the Frequent Flyer Participating Carrier Agreements, provided that the non-breaching party provides the breaching party prior written notice describing the alleged breach with as much particularity as reasonably practicable. Termination under this Section 15.2(c) shall not be effective if the breaching party corrects such breach within thirty (30) days (or other applicable cure period provided for in the Frequent Flyer Participating Carrier Agreements) following receipt of such notice. If such breach cannot be corrected within thirty (30) days (or other applicable cure period) following receipt of such notice, and the breaching party so advises the non-breaching party, the non-breaching party, in its sole discretion, may give the breaching party an additional period of time not to exceed thirty (30) days to correct the breach, provided that the breaching party has taken action reasonably contemplated to correct such breach following receipt of the notice;
  - (d) by the non-breaching party upon the breach of a payment obligation under Section 6 of this Agreement or the failure to otherwise pay any sums due to the non-breaching party pursuant to this Agreement by the breaching party, after the non-breaching party provides the breaching party at least 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;

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- (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 judgement that may have a material adverse effect on it and that 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 as defined in Section 20);
- (f) by either party (the “first party”) upon one hundred eighty (180) days’ prior written notice following receipt by such party of written notice from the other party (i) that such other party has merged or consolidated with or into any other person or entity, except where the shareholders of such party immediately after the merger or consolidation (as measured on the day immediately prior to the effective date of such merger or consolidation) continue to own over eighty percent (80%) of its voting stock and, if the party hereto is not the surviving entity, the surviving entity assumes all of the obligations and responsibilities of the party under this Agreement; (ii) that such other party has sold or otherwise transferred all or substantially all of its assets to any other person or entity; (iii) that such other party has had twenty percent (20%) or more of its voting stock acquired, directly or indirectly, by a third-party (or third parties acting as a group) in one or a series of transaction and, as a result, such third-party (or group) has the right to direct the management and policies of the party, or (iv) that more than fifty percent (50%) of its voting stock is owned at any time by a person, entity or group that held fifty percent (50%) or less immediately prior to such time of determination; provided that such other person, entity, third-party or group referred to in any of clauses (i), (ii), (iii) or (iv) is not, in the reasonable judgement of the first party, inimical to such first party’s commercial or strategic interests. If, in the reasonable judgement of the first party, such other person, entity, third-party or group is inimical to such first party’s commercial or strategic interests, then the first party shall have the right to reduce the foregoing 180-day period to no less than ninety (90) days. Each party undertakes to promptly notify the other in writing of an occurrence of any of the events specified in this Section 15.2(f); or
- (g) throughout the Term, either party has the right to suspend performance of or terminate this Agreement or remove its Code immediately by giving written notice to the other party in the event that:
- (i) the other party has suffered a significant emergency or serious incident or accident or received a serious threat that relates to any of that party’s flights or to a Codeshared Flight or Codeshared Route; or
  - (ii) the other party has received (or the non-receiving party has reason to suspect or believe that the other party has received) from any relevant Competent Authority notice that it has failed to comply with applicable safety or security requirements; or

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- (iii) the United States Department of Transportation (“DOT”) or the United States Department of Defense (“DOD”), or the counterpart authorities in Mexico, have ordered in writing or orally that the Marketing Carrier’s Code be removed from Codeshare Flights or Codeshared Routes operated by the Operating Carrier for any reason whatsoever; or
  - (iv) the civil aviation authority of the other party’s country of domicile does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the International Civil Aviation Organisation (“ICAO”), which results in Mexico receiving a rating of Category 2 from the Federal Aviation Administration (“FAA”), or the United States receiving an equivalent rating from counterpart authorities in Mexico.

If a party suspends this Agreement pursuant to this Section 15.2(g) as soon as the reason for the suspension no longer exists it shall notify the other party and this Agreement will recommence within thirty (30) days after the date of notice under the same terms and conditions, or under amended terms and conditions in accordance with Section 29.1. A party that suspends this Agreement pursuant to this Section 15.2(g) may at any time during the suspension terminate this Agreement by giving notice in writing to the other party. If this Agreement is suspended or terminated pursuant to this Section 15.2(g), Sections 15.3 through 15.4 shall apply.

- 15.3. Subject to Section 15.4, in the event of termination or expiration of this Agreement the Marketing Carrier shall, in its sole discretion, unless termination is pursuant Section 15.2(f) or Annex C or Annex D, take all reasonable actions to confirm and preserve reservations on the Operating Carrier for passengers scheduled to be traveling on Marketing Carrier Tickets and, as applicable, endorse or otherwise modify or reissue such tickets to permit use on the Operating Carrier. The Operating Carrier shall accept passengers traveling on such tickets as if such reservations had been booked through the Operating Carrier using ordinary interline procedures but giving effect to the revenue settlement methodology provided for in Section 6 of this Agreement.
- 15.4. In the event that this Agreement is terminated by the Operating Carrier pursuant to Section 15.2(d) or 15.2(e), the Operating Carrier, in its sole discretion, may decline any or all passengers scheduled to be traveling on Marketing Carrier Tickets. The Marketing Carrier shall be solely responsible for transferring the reservations of such passengers to other carriers or making other alternative arrangements.

## 16. **INDEMNIFICATION**

- 16.1. 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 the death of or injury to Codeshared Passengers traveling on Marketing Carrier Tickets that implement limits or conditions of liability or jurisdictional rules with respect to

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- 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) negligent acts or omissions of an Operating Carrier Indemnified Party, which are in any way related to services contemplated by this Agreement;
  - (c) the Operating Carrier's breach of any of its representations or warranties set forth in Section 13 of this Agreement; or
  - (d) infringement of a third-party's intellectual property or similar rights by the Operating Carrier's logos, trademarks, service marks or tradenames.
- 16.2. Subject to the indemnities provided in Section 16.1(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**") from and against any and all Damages (except as provided in Section 16.2(c)) arising out of, caused by, or occurring in connection with (or alleged to arise out of, be caused by, or 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, 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 that are in any way related to services contemplated under this Agreement, except for Damages of the type referred to in Section 16.1(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 or other applicable ticketing procedures, including, without limitation, the failure to put a proper notice of the limits of liability under the Warsaw Convention, as amended, or the Montreal Convention of 1999, as applicable, on such documentation (it being understood that in ticketing Codeshared Passengers, the Marketing Carrier is entitled to apply the limits of liability provided for in its own Conditions of Carriage); provided, however, that the Marketing Carrier shall only be liable under this Section 16.2(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 16.1(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 13 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.
- 16.3. Notwithstanding Sections 16.1 and 16.2, neither Party shall have the right to seek indemnification from the other for payments made to its own employees under workers

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compensation or similar employer liability laws, except to the extent such payments (i) arise from or relate to Damages of the type described in Section 16.1(a), or (ii) are caused by the gross negligence or willful misconduct of the other Party.

- 16.4. 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 16.4, the Indemnified Party shall not enter into any settlement or other compromise or consent to a judgement 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.
- 16.5. 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. However, the Indemnified Party will take all reasonable steps to cooperate with the Indemnifying Party in the conduct of suits, giving evidence, obtaining the attendance of witnesses and in effective settlements. 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.
- 16.6. Each party further agrees to indemnify, defend and hold harmless the other from and against any and all Taxes, or Assessments (as defined in Section 18), 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.
- 16.7. 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



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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 THIS SECTION 16 FOR DAMAGES ARISING OUT OF OR RELATING TO A CLAIM, SUIT OR CAUSE OF ACTION BY A THIRD-PARTY.

- 16.8. The rights and obligations of the parties under this Section 16 shall survive the termination or expiration of this Agreement.

## **17. INSURANCE**

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

- (a) Third-party Legal Liability in respect of all operations, including but not limited to aircraft (owned and non-owned) liability (including risks or terrorism, hijacking and allied perils), passenger and crew baggage and personal effects, funeral and repatriation expenses (including crew), all expenses arising out of the Family Assistance Act (United States) and/or similar regulations applying elsewhere in the world, cargo, mail, hangarkeepers, comprehensive general liability, or its equivalent including premises, products, completed operations, liquor law liability, and contractual liability. 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 16.1, and shall (i) name the Marketing Carrier and the Marketing Carrier Indemnified Parties as additional insureds to the extent of the protections afforded the Marketing Carrier under the indemnity specified in Section 16.1, (ii) contain a severability of interest clause and a breach of warranty clause in favor of the Marketing Carrier, (iii) specifically insure the Operating Carrier's indemnification obligations under this Agreement to the full extent of the coverage provided by the Operating Carrier's policy or policies, and (iv) contain a provision stating that the Operating Carrier's policy or policies are automatically amended to comply with the laws and regulations of any local, federal, or other governmental authority having jurisdiction over aircraft operated by the Operating Carrier.

The Operating Carrier shall maintain a limit of liability of not less than [ **Redacted** ] per any one occurrence for each aircraft, including bodily injury, personal injury, property damage, passenger (including Codeshared Passengers and other revenue and non-revenue passengers) legal liability combined, over all coverages and in the aggregate as applicable, but personal injury limited to [ **Redacted** ] except with respect to passengers (including Codeshared Passengers and other revenue and non-revenue passengers).

- (b) Hull all risk insurance, including war risk, and such policy shall include a waiver of subrogation in favor of the Marketing Carrier to the extent of the indemnity specified in Section 16.1.
- (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.
- 17.2. The Operating Carrier shall provide the Marketing Carrier with certificates of insurance evidencing such coverages, and special provisions as detailed in 17.1 (a) and (b), no less

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than thirty (30) days prior to the commencement of the first Codeshared Flight, and thereafter within five (5) Business Days of the date of any renewal of such coverage. The certificates must indicate that the above coverage shall not be canceled or adversely 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 the policy providing such coverage.

**18. TAXES**

- 18.1. Subject to Section 18.4, 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.
- 18.2. The party that acts as the Ticketing Carrier in respect of any particular transaction shall collect, except as otherwise prohibited by law, all Ticket Taxes relating to tickets sold or travel documents issued by it with respect to air transport pursuant to this Agreement. The parties hereby agree as follows:
- (a) The Ticketing Carrier shall collect, report and remit to the taxation authorities any non-interlineable Ticket Taxes levied in connection with sales of the Codeshared Flights.
  - (b) The Ticketing Carrier shall collect any interlineable Ticket Taxes levied in connection with the sales of the Codeshared Flights. If the Ticketing Carrier is the Marketing Carrier or a third-party, the Operating Carrier shall report and issue a debit invoice to the Ticketing Carrier through the Airline Clearing House for any interlineable Ticket Taxes levied in connection with the sales of the Codeshared Flights. The Operating Carrier shall remit to taxation authorities all such interlineable Ticket Taxes.
  - (c) The Operating Carrier may bill the Ticketing Carrier for any interlineable Ticket Taxes due or payable on or measured by passenger enplanement and payable or remittable by the Operating Carrier or the Marketing Carrier in accordance with industry guidelines outlined in the IATA Revenue Accounting Manual (IATA-RAM).
  - (d) If the Ticketing Carrier is a third-party, the Marketing Carrier shall use commercially reasonable efforts to cause such third-party to implement the foregoing provisions.
- 18.3. Notwithstanding the provisions of Section 18.2, if the Ticketing Carrier is prohibited by law from collecting certain Ticket Taxes in the country where tickets are sold or where travel documents are issued, then the Ticketing Carrier is relieved 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.
- 18.4. Both parties acknowledge that the tax laws of the countries in which they may operate in connection with the Codeshared Flights may require withholding of Taxes on certain of the payments that either of the parties or their agents (the “**Payer**”) may be required to pay to the other party (the “**Payee**”), under this Agreement. It is agreed that payments to

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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 taxation authority; and
- (b) within fifteen (15) days of payment by the Payer to the relevant taxation authority the amounts withheld by Payer.

- 18.5. For U.S. income tax purposes, Mexicana shall annually and timely furnish American with a duly executed U.S. tax form W-8BEN, 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 Mexicana. In the event the Payer is required to withhold taxes under the procedures of Section 18.4, 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.
- 18.6. If either party receives notice from any taxation authority with respect to any assessment or potential assessment or imposition of any Tax (collectively, an "**Assessment**") relating to this Agreement, that the other party may be responsible for paying, directly or indirectly, the party so notified shall inform the other party in writing within ten (10) days of receipt of such notice. If the party receiving such notice from a taxation authority is or will be required to pay any Assessment for which the other party is ultimately responsible, it shall be entitled to be indemnified against such Assessment in accordance with Section 16.6. The Indemnifying Party shall have the option to defend or contest such Assessment in accordance with the procedures set forth in Section 16.

## **19. JOINT MANAGEMENT COMMITTEE**

- 19.1. Coincident with the execution of this Agreement, American and Mexicana will create a Joint Management Committee (the "**Committee**"). American and Mexicana 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 at a mutually agreed time and location 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.
- 19.2. The Committee will oversee the management of the transactions and relationships contemplated in this Agreement, and, in that capacity, will review the planning and implementation of the cooperative services of American and Mexicana, and their respective airline Affiliates. The Committee will, as part of its responsibilities, monitor customer service quality, system development, performance of Codeshared Flights, marketing approach and techniques, shared use of facilities, frequent flyer arrangements, and all other aspects of the implementation, operation, and compliance with this Agreement, the Frequent Flyer Participating Agreements, and the Lounge Access 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

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to American and Mexicana by the relationship. The Committee will also actively consider, and endeavor to develop, opportunities for expanding the scope of the relationship between the parties and their respective Affiliates. Areas for further cooperation may include, but are not limited to, ground handling, joint purchasing of fuel and other items, facilities consolidation, maintenance, insurance, and the provision of management services and systems by American and/or Mexicana and their respective Affiliates. The Committee will resolve any differences between the parties on a fair and amicable basis. In performing its responsibilities, the Committee will be mindful of, and will comply with, all laws and regulations applicable to American and Mexicana, including, without limitation, laws and regulations governing competition between American and Mexicana.

**20. FORCE MAJEURE**

Except with respect to the performance of payment, confidentiality, and indemnity obligations, which shall be unconditional under this Agreement, neither party shall be liable for delays in or failure to perform under this Agreement to the extent that such delay or failure (an “**Excusable Delay**”) (a) is caused by any act of God, war, 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.

**21. GOVERNING LAW AND DISPUTE RESOLUTION**

- 21.1. 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.
- 21.2. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the “**Rules**”) by a panel of arbitrators appointed in accordance with such Rules. The arbitration panel shall consist of three (3) arbitrators who are knowledgeable about the legal, marketing, and other business aspects of the airline industry, and fluent in the English language. The arbitration may be conducted by only one (1) arbitrator if Mexicana and American agree in advance of the arbitration on a mutually acceptable individual. The arbitration proceedings shall take place in New York, New York, and shall be conducted in the English language.
- 21.3. 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.
- 21.4. Each party irrevocably designates, appoints, authorizes and empowers as its agent for service of process the Secretary of State of the State of New York or C.T. Corporation System at its offices presently located at 1633 Broadway, New York, NY 10019, to

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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 21 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 21 affects the right of any party to serve process in any manner permitted by law, or limits any right that any party may have to bring proceedings against the other party in the courts of any jurisdiction or to enforce in any lawful manner a judgement obtained in one jurisdiction in any other jurisdiction.

- 21.5. Mexicana 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 judgement or after judgement, from attachment in aid of execution or levy or execution resulting from a decree or judgement, from judgement 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.

## **22. COVENANT TO COMPLY WITH ALL LAWS**

- 22.1. 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, Mexico and all third countries including rules and regulations promulgated by the U.S. National Transportation Safety Board, U.S. Department of Transportation, U.S. Federal Aviation Administration, the U.S. Department of Defense, the U.S. Department of Homeland Security and the counterpart agencies in Mexico. Each party further agrees to participate in (i) the Advance Passenger Information System (“APIS”) program whereby the Operating Carrier will, upon request, supply the U.S. Bureau of Customs and Border Protection (“CBP”) with the required passenger manifest data from its flight(s) inbound to and outbound from the United States at the time of departure; and (ii) if applicable, any program administered by the CBP whereby the Operating Carrier is allowed to transport passengers in transit without visas via designated U.S. ports of entry to a third country.
- 22.2. 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.

## **23. PUBLICITY**

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

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## 24. CONFIDENTIALITY

24.1. 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 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 24.1.

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.

24.2. Each party acknowledges and agrees that in the event of any breach of this Section 24, 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 24 and/or to compel specific performance of this Section 24.

24.3. The confidential obligations of the parties under this Section 24 shall survive the termination or expiration of this Agreement for a period of three (3) years.

## 25. ASSIGNMENT

Neither party may assign or otherwise convey any of its rights under this Agreement, or delegate or subcontract any of its duties hereunder, without the prior written consent of the other party; provided however, that each of American and Mexicana 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 Mexicana of any of its obligations under this Agreement.

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**26. SEVERABILITY**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, such provision shall be severed from this Agreement in the jurisdiction in question and shall not affect the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or the enforceability of such provision under the law of any other jurisdiction; unless, in the reasonable opinion of either party, any such severance affects the commercial basis of this Agreement, in which case the party shall so inform the other party and the parties shall negotiate in good faith to agree upon modification of this Agreement so as to maintain the balance of the commercial interests of the parties. If, however, such negotiations are not successfully concluded within 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.

**27. EXCLUSIVITY**

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

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and Mexicana and its Affiliates, without Mexicana's prior written consent; or

(iv) permit any air carrier, other than Mexicana and its Affiliates, to place its Code on any flights to, from, via, or within Mexico operated by American or any Affiliate of American, without Mexicana's prior written consent.

(c) Notwithstanding the foregoing, Mexicana represents and warrants to American that, prior to the Commencement Date of this Agreement, Mexicana shall have ceased its codesharing relationship with United Airlines, Inc. ("United Airlines").

27.2. The foregoing Sections 27.1(a) and 27.1(b) shall not apply to:

(a) codeshared arrangements with any other carrier with respect to cargo or mail;

(b) codeshared arrangements with any member of the **oneworld**<sup>TM</sup> Alliance;

(c) those codeshared arrangements currently in force between each of Mexicana and American and third parties and any future renewals or modifications of such commitments, with the exception of Mexicana's codesharing relationship with United Airlines (such codesharing relationship to be terminated as represented in Section 27.1(c) above); and further provided that Mexicana agrees not to expand its codeshare relationship with Aeromexico to include additional transborder flights from the U.S. to Mexico or from Mexico to the U.S beyond those included in Mexicana's published schedules as of the date of execution of this Agreement.

## **28. FURTHER ASSURANCES**

28.1. 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.

28.2. If and to the extent the transactions or activities contemplated by this Agreement require the cooperation or participation of an Affiliate of a party hereto, such party shall cause such Affiliate to cooperate or participate in such transaction or activity. Each party shall cause such Affiliate to perform such acts and execute and deliver such further instruments and documents as may reasonably be required by the other party to provide for such cooperation and participation, including, without limitation, execution of an addendum providing for such Affiliate to become a party to this Agreement.

## **29. MISCELLANEOUS**

29.1. 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.

29.2. The relationship of the parties hereunder shall be that of independent contractors. Neither party is intended to have, and neither of them shall represent to any other person that it has, any power, right or authority to bind the other, or to assume, or create, any obligation or responsibility, express or implied, on behalf of the other, except as expressly required by this Agreement or as otherwise permitted in writing. Nothing in this Agreement shall be construed to create between the parties and/or the parties' Representatives any partnership, joint venture, employment relationship, franchise or agency (except that the



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Operating Carrier shall have supervisory control over all passengers during any Codeshared Flight, including any employees, agent or contractors of the Marketing Carrier who are on board any such flight).

- 29.3. In the event that there occurs a substantial change in market conditions in general or in the condition of either party, which change is not substantially the result of an act or omission of the party requesting a change or amendment to this Agreement, and which change has a material adverse effect on either party to this Agreement, then American or Mexicana 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 Mexicana will have any obligation, for any reason, to effect such an amendment.
- 29.4. 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.
- 29.5. 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.
- 29.6. 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.
- 29.7. This Agreement is the product of negotiations between Mexicana 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.
- 29.8. Although translations of this Agreement may be made into Spanish 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.

**30. NOTICES**

Unless otherwise expressly required in this Agreement or the Procedures Manual, all notices, reports, invoices and other communications required or permitted to be given to or made upon a party to this Agreement shall be in writing, shall be addressed as provided below and shall be considered as properly given and received: (i) when delivered, if delivered in person (and a signed acknowledgement of receipt is obtained); (ii) three (3) Business Days after dispatch, if dispatched by a recognized express delivery service that provides signed acknowledgements 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

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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: Managing Director – International Planning  
Responsible for Mexicana Codeshare  
Facsimile: [ *Redacted* ]  
Telephone: [ *Redacted* ]

with a copy to: 4333 Amon Carter Blvd., MD 5675  
Fort Worth, Texas 76155  
Attention: Corporate Secretary  
Phone: [ *Redacted* ]  
Facsimile: [ *Redacted* ]

**If to Mexicana:** Xola 535, 15th Floor  
Colonia del Valle 03100  
Mexico, D.F. Mexico  
Attention: Vice-President, Alliances  
Facsimile: [ *Redacted* ]  
Phone: [ *Redacted* ]

with a copy to: Xola 535, 29th Floor  
Colonia del Valle 03100  
Mexico, D.F. Mexico  
Attention: Corporate Secretary  
Facsimile: [ *Redacted* ]  
Phone: [ *Redacted* ]

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

**COMPañIA MEXICANA DE AVIACION,  
S.A. DE C.V.**

**AMERICAN AIRLINES, INC.**

By: 

Name: Fabricio Cojuc W.

Title: Executive Vice President, Alliances

By: 

Name: Henry C. Joyner

Title: Senior Vice President, Planning

**Attachments:**

Annex A - Definitions

Annex B - Codeshared Routes

Annex C - Minimum Standards of Ground and In-Flight Services

Annex D - Minimum Standards for Operating and Dependability Standards

Annex E - Financial Settlement

Annex F - Governmental Approvals

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## ANNEX A

### DEFINITIONS

“**Affected Party**” has the meaning assigned to such term in Section 24.1.

“**Affiliate**” means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with, such person or entity. For purposes of this definition, “**control**” (including “**controlled by**” and “**under common control with**”) means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise. For example, based on this definition, as of the date of this Agreement, American Eagle Airlines, Inc., Executive Airlines, Inc. (each of which operate under the name “American Eagle”), and Aerovias Caribe, S.A. de C.V. (“Aerocaribe”) are considered to be Affiliates of the parties. Notwithstanding the foregoing, Aerovias de Mexico S.A. de C.V. (“Aeromexico”), Aerolitoral S.A. de C.V. (Aerolitoral”), and any air carrier directly or indirectly controlled by Aeromexico shall not be considered Affiliates of Mexicana.

“**Airline Clearing House**” means the Airline Clearing House, Inc., or ACH, which administers and implements revenue settlement between carriers by reference to the ACH Procedures Manual.

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

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

“**ATPCO**” means the Airline Tariff Publishing Company.

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

“**CBP**” means the U.S. Bureau of Customs and Border Protection.

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

“**Codeshare Commission**” has the meaning assigned to such term in Section 6.3.

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

“**Codeshared Routes**” has the meaning assigned to such term in Section 2.1.

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

“**Commencement Date**” has the meaning assigned to such term in Section 15.1.

“**Committee**” has the meaning assigned to such terms in Section 19.1.

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

**“Conditions of Carriage”** means those conditions of contract tariffs and rules of carriage of a party that govern the transport of passengers traveling on tickets showing such party’s Code in the carrier code box of the flight coupon.

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

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

**“Damages”** means all claims, suits, causes of action, penalties, liabilities, judgements, fines, losses and expenses of any nature or kind whatsoever (including, for the avoidance of doubt, internal expenses of the indemnified party, such as employee salaries and the costs of cooperating in the investigation, preparation or defense of claims) under the laws of any jurisdiction (whether arising in tort, contract, under the Warsaw Convention or Montreal Convention of 1999 and related instrument, or otherwise), including reasonable costs and expenses of investigating, preparing or defending any claim, suit, action or proceeding (including post judgement and appellate proceedings or proceedings that are incidental to the successful establishment of a right of indemnification), such as reasonable attorneys’ fees and fees for expert witnesses, consultants and litigation support services.

**“Disclosing Party”** has the meaning assigned to such term in Section 24.1.

**“Excusable Delay”** has the meaning assigned to such term in Section 20.

**“Frequent Flyer Participating Carrier Agreements”** means the agreements, from time to time, between the parties relating to the participation of one party in the other party’s frequent flyer program.

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

**“IATA”** means the International Air Transport Association.

**“Indemnification Notice”** has the meaning assigned to such term in Section 16.4.

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“**Indemnified Party**” has the meaning assigned to such term in Section 16.4.

“**Indemnifying Party**” has the meaning assigned to such term in Section 16.4.

“**Interline Service Charge**” means the payment by the ticket using carrier to the Ticketing Carrier, according to the industry program for compensation for the Ticketing Carrier’s commission sales costs. Such payment is equivalent to the standard IATA commission rate (currently 9%), as may be amended from time to time by IATA, multiplied by the revenue value of the ticket, as printed on the ticket.

“**Licensed Trademark**” has the meaning assigned to such term in Section 12.2.

“**Lounge Access Agreement**” means the agreement, from time to time, between the parties relating to the access to a party’s club lounge by the other party’s Codeshared Passengers traveling on a Codeshared Flight.

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

“**Marketing Carrier Flight Coupon**” means a flight coupon of a ticket issued by the Marketing Carrier, Operating Carrier or a third-party for travel on a Codeshared Flight showing the Marketing Carrier’s Code in the carrier code box of the flight coupon.

“**Marketing Carrier Indemnified Party**” has the meaning assigned to such term in Section 16.1.

“**Marketing Carrier Reviews**” has the meaning assigned to such term in Section 9.2.

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

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

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

“**Normal Fare**” has the meaning assigned to such term in the IATA Prorate Manual Passenger Part 1, Section E.

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

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

“**Operating Carrier Indemnified Party**” has the meaning assigned to such term in Section 16.2.

“**Payee**” and “**Payer**” have the meanings assigned to such terms in Section 18.4.

“**Procedures Manual**” means a detailed procedures manual prepared by the parties for implementing the transactions contemplated by this Agreement.

“**Representatives**” has the meaning assigned to such term in Section 24.1.

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

**“Rules”** has the meaning assigned to such term in Section 21.2.

**“Special Prorate Agreement”** means any bilateral agreement, from time to time, between the parties relating to the proration of interline revenue.

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

**“TCN Codeshare Agreement”** means the agreement between the Marketing Carrier and ATPCO that allows ATPCO to store and make available for distribution to parties designated by the Marketing Carrier TCN data of the Codeshared Flights.

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

**“Ticket Taxes”** means any transactional taxes or passenger facility charges, including, without limitation, sales taxes, use taxes, stamp taxes, excise taxes, value added taxes, gross receipts taxes, departure taxes, surcharges and travel taxes, and all related charges, fees, licenses or assessments (and any interest or penalty thereon) imposed on passengers (or which air carriers or their agents are required to collect from passengers) by any authority in any country, or political subdivision thereof or public authority operating therein (including, without limitation any national, federal, state, provincial, territorial, local, municipal, port or airport authority) or which are levied upon passengers by operation of applicable law or industry standard. Ticket Taxes together with the taxes referred to in Section 18.1 are collectively referred to as **“Taxes”**.

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

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## ANNEX B

### CODESHARED ROUTES

1. The parties shall mutually designate certain flights serving the Codeshared Routes shown below on which the parties shall place their respective Codes. The implementation for Codeshared Routes shall occur in phases, subject to obtaining all Governmental Approvals.

#### Codeshared Flights Between AA / AA\* Mexican Gateways and

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
Acapulco, Guerrero	MX
Cancun, Quintana Roo	MX
Chetumal, Quintana Roo	MX
Ciudad del Carmen, Campeche	MX
Cozumel, Quintana Roo	MX
Guadalajara, Jalisco	MX
Hermosillo, Sonora	MX
Bahias de Huatulco, Oaxaca	MX
Leon, Guanajuato	MX
Manzanillo, Colima	MX
Mazatlan, Sinaloa	MX
Merida, Yucatan	MX
Mexicali, Baja California	MX
Mexico City, Distrito Federal	MX
Minatitlan, Veracruz	MX
Monterrey, Nuevo Leon	MX
Morelia, Michoacan	MX
Nuevo Laredo, Tamaulipas	MX
Oaxaca, Oaxaca	MX
Puerto Escondido, Oaxaca	MX
Puerto Vallarta, Jalisco	MX
Saltillo, Coahuila	MX
San Jose del Cabo, Baja California Sur	MX
Tampico, Tamaulipas	MX
Tijuana, Baja California	MX
Tuxtla, Chiapas	MX
Veracruz, Veracruz	MX
Villahermosa, Tabasco	MX
Zacatecas, Zacatecas	MX
Ixtapa/Zihuatanejo, Guerrero	MX

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier



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**Codeshared Flights Between MX / MX\* U.S. Gateways and**

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
Albuquerque, New Mexico	AA
Atlanta, Georgia	AA
Austin, Texas	AA
Baltimore, Maryland	AA
Boston, Massachusetts	AA
Charlotte, North Carolina	AA
Chicago (MDW), Illinois	AA
Chicago (ORD), Illinois	AA
Cincinnati, Ohio	AA
Cleveland, Ohio	AA
Columbus, Ohio	AA
Dallas/Ft. Worth, Texas	AA
Denver, Colorado	AA
Detroit, Michigan	AA
El Paso, Texas	AA
Fresno, California	AA
Honolulu, Hawaii	AA
Houston, Texas	AA
Indianapolis, Indiana	AA
Kansas City, Kansas	AA
Las Vegas, Nevada	AA
Los Angeles, California	AA
Miami, Florida	AA
Milwaukee, Wisconsin	AA
Minneapolis/St. Paul, Minnesota	AA
Nashville, Tennessee	AA
Newark, New Jersey	AA
New Orleans, Louisiana	AA
New York (JFK), New York	AA
New York (LGA), New York	AA
Oakland, California	AA
Omaha, Nebraska	AA
Ontario, California	AA
Orlando, Florida	AA
Philadelphia, Pennsylvania	AA
Phoenix, Arizona	AA
Pittsburgh, Pennsylvania	AA
Portland, Oregon	AA
Raleigh, North Carolina	AA
Sacramento, California	AA
Salt Lake City, Utah	AA

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier

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**Codeshared Flights Between MX / MX\* U.S. Gateways and**

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
San Antonio, Texas	AA
San Diego, California	AA
San Francisco, California	AA
San Jose, California	AA
Seattle, Washington	AA
St. Louis, Missouri	AA
Tampa, Florida	AA
Tucson, Arizona	AA
Washington, D.C. (DCA)	AA
Washington, D.C. (IAD)	AA

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier

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**Codeshared Flights Between U.S. and Mexico**

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
Boston, Massachusetts – Cancun, Quintana Roo	AA
Chicago (ORD), Illinois – Acapulco, Guerrero	AA
Chicago (ORD), Illinois – Cancun, Quintana Roo	AA
Chicago (ORD), Illinois – Mexico City, Distrito Federal	AA
Chicago (ORD), Illinois – Puerto Vallarta, Jalisco	AA
Chicago (ORD), Illinois – San Jose del Cabo, Baja California Sur	AA
Dallas/Ft. Worth, Texas – Acapulco, Guerrero	AA
Dallas/Ft. Worth, Texas – Aguascalientes, Aguascalientes	AA
Dallas/Ft. Worth, Texas – Cancun, Quintana Roo	AA
Dallas/Ft. Worth, Texas – Cozumel, Quintana Roo	AA
Dallas/Ft. Worth, Texas – Guadalajara, Jalisco	AA
Dallas/Ft. Worth, Texas – Ixtapa/Zihuatanejo, Guerrero	AA
Dallas/Ft. Worth, Texas – Leon, Guanajuato	AA
Dallas/Ft. Worth, Texas – Mexico City, Distrito Federal	AA
Dallas/Ft. Worth, Texas – Monterrey, Nuevo Leon	AA
Dallas/Ft. Worth, Texas – Puerto Vallarta, Jalisco	AA
Dallas/Ft. Worth, Texas – San Jose del Cabo, Baja California Sur	AA
Los Angeles, California – San Jose del Cabo, Baja California Sur	AA
Miami, Florida – Cancun, Quintana Roo	AA
Miami, Florida – Mexico City, Distrito Federal	AA
New York (JFK), New York – Cancun, Quintana Roo	AA
St. Louis, Missouri – Cancun, Quintana Roo	AA
Chicago (ORD), Illinois – Durango, Durango	MX
Chicago (ORD), Illinois – Guadalajara, Jalisco	MX
Chicago (ORD), Illinois – Mexico City, Distrito Federal	MX
Chicago (ORD), Illinois – Monterrey, Nuevo Leon	MX
Chicago (ORD), Illinois – Morelia, Michoacan	MX
Chicago (ORD), Illinois – Zacatecas, Zacatecas	MX
Denver, Colorado – Mexico City, Distrito Federal	MX
Las Vegas, Nevada – Guadalajara, Jalisco	MX
Las Vegas, Nevada – Mexico City, Distrito Federal	MX
Los Angeles, California – Cancun, Quintana Roo	MX
Los Angeles, California – Guadalajara, Jalisco	MX
Los Angeles, California – Leon, Guanajuato	MX
Los Angeles, California – Mexico City, Distrito Federal	MX
Los Angeles, California – Morelia, Michoacan	MX
Los Angeles, California – San Jose del Cabo, Baja California Sur	MX
Los Angeles, California – Zacatecas, Zacatecas	MX
Miami, Florida – Cancun, Quintana Roo	MX
Miami, Florida – Mexico City, Distrito Federal	MX
Newark, New Jersey – Mexico City, Distrito Federal	MX

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier

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### Codeshared Flights Between U.S. and Mexico

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
Oakland, California – Guadalajara, Jalisco	MX
Oakland, California – Leon, Guanajuato	MX
Oakland, California – Zacatecas, Zacatecas	MX
Portland, Oregon – Guadalajara, Jalisco	MX
Sacramento, California – Guadalajara, Jalisco	MX
San Antonio, Texas – Guadalajara, Jalisco	MX
San Antonio, Texas – Mexico City, Distrito Federal	MX
San Francisco, California – Guadalajara, Jalisco	MX
San Francisco, California – Mexico City, Distrito Federal	MX
San Francisco, California – Morelia, Michoacan	MX
San Jose, California – Guadalajara, Jalisco	MX
San Jose, California – Morelia, Michoacan	MX

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier

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**Codeshared Flights Between MX / MX\* U.S. Gateways and**

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
Tokyo, Japan (NRT)	AA
Brussels, Belgium (BRU)	AA
Zurich, Switzerland (ZRH)	AA
Frankfurt, Germany (FRA)	AA
Madrid, Spain (MAD)	AA
Paris, France (CDG)	AA
London, United Kingdom (LGW)	AA
London, United Kingdom (LHR)	AA
Manchester, United Kingdom (MAN)	AA
Rome, Italy (FCO)	AA
Calgary, Canada (YYC)	AA
Montreal Dorval, Canada (YUL)	AA
Toronto, Canada (YYZ)	AA
Vancouver, Canada (YVR)	AA
Buenos Aires, Argentina (EZE)	AA
La Paz, Bolivia (LPB)	AA
Santa Cruz, Bolivia (VVI)	AA
Rio de Janeiro, Brazil (GIG)	AA
Sao Paulo, Brazil (GRU)	AA
Santiago, Chile (SCL)	AA
Guayaquil, Ecuador (GYE)	AA
Quito, Ecuador (UIO)	AA
Lima, Peru (LIM)	AA
Asuncion, Paraguay (ASU)	AA
Montevideo, Uruguay (MVD)	AA
Anguilla, West Indies (AXA)	AA
Antigua, West Indies (ANU)	AA
Aruba, Aruba (AUA)	AA
Barbados, Barbados (BGI)	AA
Bermuda, Atlantic Ocean (BDA)	AA
Bonaire, Neth. Antilles (BON)	AA
Canouan Island, Windward Island (CIW)	AA
Casa De Campo, Dominican Republic (LRM)	AA
Curacao, Neth. Antilles (CUR)	AA
Dominica, Dominica (DOM)	AA
Freeport, Bahamas (FPO)	AA
George Town, Bahamas (GGT)	AA
Grand Cayman Island, West Indies (GCM)	AA
Grenada, Windward Islands (GND)	AA
Kingston(Intl), Jamaica (KIN)	AA
Marsh Harbour, Bahamas (MHH)	AA
Montego Bay, Jamaica (MBJ)	AA
Nassau(Intl), Bahamas (NAS)	AA
Nevis, Leeward Islands (NEV)	AA
Pointe A Pitre, Guadeloupe (PTP)	AA
Port Au Prince, Haiti (PAP)	AA

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier

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**Codeshared Flights Between MX / MX\* U.S. Gateways and**

<u>Routes</u>	<u>Operating Carrier<sup>1</sup></u>
Port Of Spain, Trinidad (POS)	AA
Providenciales, Turks & Caicos (PLS)	AA
Puerto Plata, Dominican Republic (POP)	AA
Punta Cana, Dominican Republic (PUJ)	AA
Santiago, Dominican Republic (STI)	AA
Santo Domingo, Dominican Republic (SDQ)	AA
St. Kitts, Leeward Islands (SKB)	AA
St. Lucia, West Indies (SLU)	AA
St. Maarten, Netherland Antilles (SXM)	AA
Tortola, British Virgin Islands (EIS)	AA

2. The Operating Carrier reserves the right to change the flight numbers, equipment, and schedules for Codeshared Flights.
  
3. The parties may add Codeshared Flights, as may be mutually agreed, without formally amending this Agreement. Either party may, in its sole discretion, discontinue Codeshared Flights without formally amending this Agreement. The Marketing Carrier shall notify the Operating Carrier of its intent to discontinue a Codeshared Flight prior to publishing such changes in the Airline Guides, CRSs, or Reservations Systems. Such changes shall be evidenced by the Marketing Carrier publishing such changes in the Airline Guides, CRSs, or Reservations Systems. The Operating Carrier reserves the right to discontinue any specific route, flight or schedule. In the event of such discontinuation, the Operating Carrier shall notify the Marketing Carrier and the Marketing Carrier shall cooperate in publishing the resulting changes to affected Codeshared Flights in the Airline Guides, CRSs, Reservations Systems, and other sources of airline schedule information.

<sup>1</sup>Certain routes may currently or in the future be operated in whole or in part by Affiliates of the Operating Carrier

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## ANNEX C

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

1. The parties agree that international ground and in-flight services should be competitive with other international carriers operating on the applicable Codeshare Routes, and that the services should remain competitive as improvements are made by other international carriers. The parties also agree that the domestic ground and in-flight services should be competitive with other domestic carriers operating on the applicable Codeshared Routes, and that the services should remain competitive as improvements are made by other domestic carriers. Furthermore, the parties agree that their ground and in-flight services should meet customer expectations, on an ongoing basis. In order to meet these objectives, Mexicana and American may from time to time be required to implement service upgrades as mutually agreed upon by the parties.
2. Operating standards and general passenger procedures and policies for the Codeshared Flights are detailed in the Procedures Manual.
3. The parties agree to monitor in-flight consumer research on customer priorities and satisfaction. Benchmarking research will be conducted to prioritize individual product features based on their importance to overall customer satisfaction and to obtain customer satisfaction ratings for individual product categories as well as the overall airline experience. Ongoing research will also be conducted during the term of the contract, to monitor customer satisfaction. The parties will meet periodically to review customer satisfaction and benchmarking research data, in order to identify product categories that require improvement by the carrier(s).
  - a) The parties agree that the number of Codeshared Passenger complaints received by the Marketing Carrier regarding the Codeshared Flights will be measured twice a year by the Marketing Carrier as a ratio of Codeshared Passenger complaints per one thousand (1,000) passengers boarded. Codeshared Passenger complaints measured will be those from the following passenger groups: First and Business Class, Full Fare Coach, Premium Frequent Flyer Program Members, Airport Club Members, VIPs (very important persons), customers with disabilities, and complaints regarding sensitive issues (i.e., food poisoning, unaccompanied minors, discrimination, and international documents). If the ratio of Codeshared Passenger complaints for any one city-pair or for the total average of all of the Codeshared Flights, exceeds [ **Redacted** ] passengers boarded for any half year period, the Operating Carrier agrees to take the appropriate corrective actions, upon notification by the Marketing Carrier. The parties will agree on a consistent methodology for determining the foregoing ratio.
  - b) The Operating Carrier agrees to review passenger and baggage mishandling complaints and further, the Operating Carrier agrees to take the appropriate corrective actions.
4. If the Operating Carrier fails to meet the standards established by this [Annex C](#) or incurs excess aircraft incidents affecting the Codeshared Flights, the Marketing Carrier, at its discretion, will be entitled to withdraw its Code from the affected Codeshare Flight(s). If the affected Codeshared Flights are not brought back into compliance with this [Annex C](#) within ninety (90) days following the removal of the Marketing Carrier's Code from the affected Codeshared Flight(s), the Marketing Carrier, at its discretion, will be entitled to terminate the Agreement in its entirety or with respect to the affected Codeshared Flight(s).

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5. AUTOMATION

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

- a) Automated Reservation (PNR) Exchange - The Operating Carrier will accept automatically Codeshared Passenger PNRs and Special Service Request (SSR) items from the Marketing Carrier's computer system.
- b) Pre-Reserved Seating - A mechanism will exist so that pre-reserved seating on the Codeshared Flights will be available to Codeshared Passengers.
- c) Flight Movement Messages - The Operating Carrier must provide, in a timely fashion, flight movement messages (e.g., departure, delay and arrival times) for the Codeshared Flights to the Marketing Carrier's computer system.
- d) Airport Check-in - Automation must exist between the parties so that transiting passengers will not need to recheck-in at the transit city. Codeshared Passengers will check-in at the applicable origin station and be provided boarding passes for all segments of such Codeshared Passengers' itinerary.
- e) Hand Back Messages (Post Departure Reconciliation and Close-out) - The Operating Carrier must provide electronically a list of Codeshared Passengers who traveled on the Codeshared Flights. The preferred format is an IATA-standard Passenger Reconciliation List (PRL).

6. FACILITIES

- a) The parties acknowledge the importance of maintaining functional and accurate signs identifying the Marketing Carrier, as appropriate, to facilitate passenger convenience and to avoid confusion at airports served by the Codeshared Flights. The Operating Carrier shall ensure that ticket counters at each station will identify prominently the Marketing Carrier, and promote the Marketing Carrier equally to the other airlines that have a similar cooperative relationship with the Operating Carrier at such airports. The parties shall mutually agree on the placement of such signs, subject to the approval of the relevant airport authority or other lessors.
- b) The Operating Carrier will be responsible for the cost and expense associated with developing and installing the appropriate signs at airports served by the Codeshared Flights.
- c) Each party shall make commercially reasonable efforts to depart from or arrive at the same terminal at airports served by Codeshared Flights.



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7. GATE AND RAMP HANDLING

- a) The Operating Carrier shall arrange for trained personnel, acceptable to the Marketing Carrier, to handle all gate (including ramp handling) and boarding services of Codeshared Passengers on the Codeshared Flights.
- b) All costs, fines, and penalties incurred with a refusal by the immigration (or equivalent) authorities of a country to permit entry of any Codeshared Passengers at a destination point, shall be borne by the Operating Carrier that delivers the passenger on the international segment of the itinerary.

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## ANNEX D

### MINIMUM STANDARDS FOR OPERATING AND DEPENDABILITY

1. The Operating Carrier shall adhere to the following operation completion and dependability standards for each Codeshared Flight. Each Codeshared Flight shall have an operating completion rate of [ *Redacted* ] and an arrival rate of [ *Redacted* ] within [ *Redacted* ] of the scheduled arrival time, as measured on an average basis every six (6) months during the term of this Agreement. The Operating Carrier shall measure the performance of the Codeshared Flights that it operates and provide such data to the Marketing Carrier. The Marketing Carrier shall be entitled to review and, if appropriate, dispute the accuracy of the Operating Carrier's data.
2. If the Operating Carrier fails to meet the standards established by this [Annex D](#) with respect to any city-pair market served by the Codeshared Flights (the "Affected Codeshared Flight"), the Marketing Carrier shall be entitled, after providing the Operating Carrier with a reasonable opportunity to cure such failure (which shall not exceed ninety (90) days), to withdraw its Code from the affected city-pair market. If the Affected Codeshared Flight is not brought back into compliance with this [Annex D](#) at the end of the next six-month period, the Marketing Carrier, at its discretion, shall be entitled to terminate this Agreement in its entirety or with respect to the affected city-pair market.

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## ANNEX E

### FINANCIAL SETTLEMENT

#### CODESHARE COMMISSION

The Codeshare Commission only applies to the Codeshared Flights between the United States and Mexico where either American or Mexicana places its Marketing Carrier Code. The Codeshare Commission will apply to all fares including, but not limited to, published fares, unpublished fares, corporate discounts, and net fares. The Codeshare Commission will apply to all coupons originally ticketed on or reissued to a Marketing Flight between the United States and Mexico. The Codeshare Commission for these Codeshared Flights will be calculated by multiplying the gross prorated value (as determined in accordance with Sections 6.2(a) and 6.3) of Marketing Carrier Flight Coupons by the applicable Codeshare Commission percentage, which for purposes of this Agreement, is detailed in the table below.

	Codeshare Commission
First Class Fare	[ <i>Redacted</i> ]
Business Class Fare	[ <i>Redacted</i> ]
Economy Class Normal Fare (as defined in <a href="#">Annex A</a> )	[ <i>Redacted</i> ]
Other Economy Class Fare (i.e., not a Normal Fare)	[ <i>Redacted</i> ]

The Ticketing Carrier will receive the Interline Service Charge, which will be in addition to the Codeshare Commission payable to the Marketing Carrier.

The Codeshare Commission may be renegotiated by and between the parties as follows:

- (a) at any time by mutual written consent of the parties hereto;
- (b) at any time after the eighteenth (18) month anniversary of the first implemented Codeshared Flight upon either party providing at least thirty (30) days' written notice to the other party, such notice to be served no earlier than the eighteenth (18) month anniversary of the first implemented Codeshared Flight, and such renegotiation to occur no later than thirty (30) days after such notice is sent.

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**ANNEX F**

**GOVERNMENTAL APPROVALS**

American shall secure and maintain the following governmental approvals:

1. Economic authority from the United States Department of Transportation (“**DOT**”) to codeshare with Mexicana over the Codeshared Routes.
2. License from the Mexican aviation authority to enter into the codesharing arrangement with Mexicana.
3. Statement of Authorization under 14 CFR, Part 207 from DOT to place the MX code on the Codeshared Flights operated by American.

Mexicana shall secure and maintain the following governmental approvals:

1. Economic authority from the Mexican aviation authority to codeshare with American over the Codeshared Routes.
2. License from DOT to enter into the codeshare arrangement with American.
3. Statement of Authorization under 14 CFR, Part 212 from DOT to place the American Code on Codeshared Flights operated by Mexicana.