

# Air Services Agreement

between the Government of Hong Kong  
and the Government of the Republic of India

# **AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE REPUBLIC OF INDIA**

The Government of Hong Kong and the Government of the Republic of India,

Desiring to promote their civil aviation relations and to conclude an Agreement for the purpose of developing air services between Hong Kong and India,

Have agreed as follows:

## **ARTICLE 1**

### **Definitions**

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

- (a) the term “aeronautical authorities” means in the case of the Government of Hong Kong, the Director of Civil Aviation, and in the case of the Government of the Republic of India, the Director General of Civil Aviation, or, in both cases, any person or body authorised to perform any functions at present exercisable by the above-mentioned authorities or similar functions;
- (b) the term “designated airline” means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;
- (c) the term “area” in relation to Hong Kong includes Hong Kong Island, Kowloon and the New Territories and in relation to India has the meaning assigned to “territory” in Article 2 of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;
- (d) the terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the said Convention;
- (e) the term “this Agreement” includes the Annex hereto and any amendments to it or to this Agreement.

## **ARTICLE 2**

### **Provisions of the Chicago Convention Applicable to International Air Services**

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, including the Annexes and any amendments to the Convention or to its Annexes which apply to both Contracting Parties, insofar as those provisions are applicable to international air services.

## ARTICLE 3

### **Grant of Rights**

- (1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:
  - (a) the right to fly across its area without landing;
  - (b) the right to make stops in its area for non-traffic purposes.
- (2) Each Contracting Party grants to the other Contracting Party the rights hereinafter specified in this Agreement for the purpose of operating international air services on the routes specified in the appropriate Section of the Annex to this Agreement. Such services and routes are hereinafter called “the agreed services” and “the specified routes” respectively. While operating an agreed service on a specified route the designated airlines of each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the area of the other Contracting Party at points determined for that route in accordance with the Annex to this Agreement for the purpose of taking on board and discharging passengers and cargo, including mail, separately or in combination.
- (3) Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airlines of one Contracting Party the right to take on board, at one point in the area of the other Contracting Party, passengers and cargo, including mail, carried for hire or reward and destined for another point in the area of the other Contracting Party.

## ARTICLE 4

### **Designation of and Authorisation of Airlines**

- (1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designations.
- (2) On receipt of such a designation the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this Article, without delay grant to the airline or airlines designated the appropriate operating authorisations.
- (3)
  - (a) The Government of Hong Kong shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of this Agreement, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Republic of India or its nationals.
  - (b) The Government of the Republic of India shall have the right to refuse to grant the operating authorisations referred to in paragraph (2) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3(2) of

this Agreement, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong.

(4) The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of international air services by such authorities.

(5) When an airline has been so designated and authorised it may begin to operate the agreed services, provided that the airline complies with the applicable provisions of this Agreement.

## ARTICLE 5

### **Revocation or Suspension of Operating Authorisation**

(1) Each Contracting Party shall have the right to revoke or suspend an operating authorisation for the exercise of the rights specified in Article 3(2) of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of those rights:

- (a) (i) in the case of the Government of Hong Kong, in any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Government of the Republic of India or its nationals;
- (ii) in the case of the Government of the Republic of India, in any case where it is not satisfied that that airline is incorporated and has its principal place of business in Hong Kong; or
- (b) in the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting those rights; or
- (c) if that airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation or suspension of the operating authorisation mentioned in paragraph (1) of this Article or imposition of the conditions therein is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

## ARTICLE 6

### **Principles Governing Operation of Agreed Services**

(1) There shall be fair and equal opportunity for the designated airlines of the Contracting Parties to operate the agreed services on the specified routes.

(2) In operating the agreed services the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provide on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision at a reasonable load factor of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, originating in or destined for the area of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo, including mail, both taken on board and discharged at points on the specified routes other than points in the area of the Contracting Party which designated the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) traffic requirements to and from the area of the Contracting Party which has designated the airline;
- (b) traffic requirements of the region through which the agreed service passes, taking account of other air services established by airlines of the States comprising that region; and
- (c) the requirements of through airline operation.

(4) The capacity to be provided on the specified routes shall be such as is from time to time jointly determined by the Contracting Parties.

## ARTICLE 7

### **Tariffs**

(1) The term “tariff” means one or more of the following:

- (a) the fare charged by an airline for the carriage of passengers and their baggage on scheduled air services and the charges and conditions for services ancillary to such carriage;
- (b) the rate charged by an airline for the carriage of cargo (excluding mail) on scheduled air services;
- (c) the conditions governing the availability or applicability of any such fare or rate including any benefits attaching to it; and
- (d) the rate of commission paid by an airline to an agent in respect of tickets sold or air waybills completed by that agent for carriage on scheduled air services.

(2) The tariffs to be applied by a designated airline of one Contracting Party for carriage to and from the area of the other Contracting Party shall be those approved by the aeronautical authorities of both Contracting Parties and shall be established at reasonable levels, due regard being had to all relevant factors, including the cost of operating the agreed services, the interests of users, reasonable profit and the tariffs of other airlines operating over the whole or part of the same route.

(3) The tariffs referred to in paragraph (2) of this Article may be agreed by the designated airlines of the Contracting Parties seeking approval of the tariffs, which may consult other airlines operating over the whole or part of the same route, before proposing such tariffs. Such agreement may be reached by use of the

appropriate international rate fixing mechanism. However, a designated airline shall not be precluded from proposing, nor the aeronautical authorities of the Contracting Parties from approving, any tariff, if that airline shall have failed to obtain the agreement of the other designated airline(s) to such a tariff, or because no other designated airline is operating on the same route. References in this and the preceding paragraph to “the same route” are to the route operated, not the specified route.

(4) Any tariff proposed by a designated airline of one Contracting Party for carriage to and from the area of the other Contracting Party shall be filed with relevant aeronautical authorities by the designated airline seeking approval of the tariff in such form as required to disclose the particulars referred to in paragraph (1) of this Article. It shall be filed not less than 60 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) before the proposed effective date. The proposed tariff shall be treated as having been filed with the aeronautical authorities of a Contracting Party on the date on which it is received by those aeronautical authorities.

(5) Any proposed tariff may be approved by the aeronautical authorities of a Contracting Party at any time and, provided it has been filed in accordance with paragraph (4) of this Article, shall be deemed to have been approved by the aeronautical authorities of that Contracting Party unless, within 30 days (or such shorter period as the aeronautical authorities of the Contracting Parties may agree) after the date of filing, the aeronautical authorities of one Contracting Party have served on the aeronautical authorities of the other Contracting Party written notice of disapproval of the proposed tariff.

(6) If a notice of disapproval is given in accordance with the provisions of paragraph (5) of this Article, the aeronautical authorities of the Contracting Parties may jointly determine the tariff. For this purpose, one Contracting Party may, within 30 days of the service of the notice of disapproval, request consultations between the aeronautical authorities of the Contracting Parties which shall be held within 30 days from the date the other Contracting Party receives such request in writing.

(7) If a tariff has been disapproved by the aeronautical authorities of a Contracting Party in accordance with paragraph (5) of this Article, and if the aeronautical authorities of the Contracting Parties have been unable jointly to determine the tariff in accordance with paragraph (6) of this Article, the dispute may be settled in accordance with the provisions of Article 15 of this Agreement.

(8) Subject to paragraph (9) of this Article, a tariff established in accordance with the provisions of this Article shall remain valid until a replacement tariff has been established.

(9) Except with the agreement of the aeronautical authorities of both Contracting Parties, and for such period as they may agree, the validity of a tariff shall not be prolonged by virtue of paragraph (8) of this Article:

- (a) where a tariff has a terminal date, for more than 12 months after that date;
- (b) where a tariff has no terminal date, for more than 12 months after the date on which a replacement tariff is filed with the aeronautical authorities of the Contracting Parties by a designated airline of a Contracting Party.

## ARTICLE 8

### **Customs Duties**

- (1) Aircraft operated in international air services by the designated airlines of one Contracting Party, their regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, and aircraft stores (including but not limited to such items as food, beverages and tobacco) which are on board such aircraft shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, provided such regular equipment and such other items remain on board the aircraft.
- (2) Regular equipment, fuel, lubricants, consumable technical supplies, spare parts including engines, aircraft stores (including but not limited to such items as food, beverages and tobacco), introduced into the area of the other Contracting Party by or on behalf of that designated airline or taken on board the aircraft operated by that designated airline, shall be exempted by the other Contracting Party on the basis of reciprocity from all customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival, even when such regular equipment and such other items are to be used on any part of a journey performed over the area of the other Contracting Party.
- (3) The regular equipment and the other items referred to in paragraphs (1) and (2) of this Article may be required to be kept under the supervision or control of the customs authorities of the other Contracting Party.
- (4) The regular equipment and the other items referred to in paragraph (1) of this Article may be unloaded in the area of the other Contracting Party with the approval of the customs authorities of that other Contracting Party. In these circumstances, such regular equipment and such items shall enjoy, on the basis of reciprocity, the exemptions provided for by paragraph (1) of this Article until they are re-exported or otherwise disposed of in accordance with customs regulations. The customs authorities of that other Contracting Party may however require that such regular equipment and such items be placed under their supervision up to such time.
- (5) The exemptions provided for by this Article shall also be available in situations where a designated airline of one Contracting Party has entered into arrangements with another airline or airlines for the loan or transfer in the area of the other Contracting Party of the regular equipment and the other items referred to in paragraphs (1) and (2) of this Article, provided that that other airline or airlines similarly enjoy such exemptions from that other Contracting Party.
- (6) Baggage and cargo in direct transit across the area of a Contracting Party shall be exempt from customs duties, excise taxes and similar fees and charges not based on the cost of services provided on arrival.

## ARTICLE 9

### **Aviation Security**

- (1) Each Contracting Party reaffirms that its obligation to the other Contracting Party to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Each Contracting Party shall in particular act in conformity with the civil aviation security provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the

Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

(2) Each Contracting Party shall be provided at its request with all necessary assistance by the other Contracting Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

(3) The Contracting Parties shall, in their mutual relations, act in conformity with the applicable aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944. Each Contracting Party shall require that operators of aircraft of its registry or operators of aircraft having their principal place of business or permanent residence in its area, and the operators of airports in its area, act in conformity with such aviation security provisions.

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

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

## ARTICLE 10

### **Provision of Operating Information**

The aeronautical authorities of one Contracting Party shall cause the designated airline(s) of that Contracting Party to communicate to the aeronautical authorities of the other Contracting Party, as far in advance as practicable, prior to the inauguration of the agreed services, the type of service, the type of aircraft to be used, the flight schedules, tariff schedules, and any other relevant information concerning the operation of the agreed services including such information as may be required to satisfy the aeronautical authorities of the other Contracting Party that the requirements of this Agreement are being duly observed. The requirements of this Article shall likewise apply to any changes concerning the agreed services.



## ARTICLE 11

### **Provision of Statistics**

The aeronautical authorities of one Contracting Party shall cause the designated airline(s) of that Contracting Party to furnish to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried during each month on the agreed services to and from the area of the other Contracting Party, showing the points of embarkation and disembarkation of such traffic and any other relevant information required by the aeronautical authorities of the other Contracting Party. Such statistics shall be furnished as soon as possible after the end of each month.

## ARTICLE 12

### **Conversion and Remittance of Revenue**

- (1) Subject only to foreign currency regulations which may be imposed by India with uniform application, the designated airlines of Hong Kong shall have the right to convert and remit to Hong Kong from India local revenues in excess of sums locally disbursed.
- (2) The designated airlines of India shall have the right to convert and remit to India from Hong Kong local revenues in excess of sums locally disbursed.
- (3) The conversion and remittance of such revenues shall be in a freely convertible currency, shall be permitted at the rate of exchange applicable to current transactions which is in effect at the time such revenues are converted and remitted, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

## ARTICLE 13

### **Airline Representation and Sales**

The designated airlines of each Contracting Party shall have the right:

- (a) in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, to bring into and maintain in the area of that other Contracting Party those of their own managerial, administrative, technical, operational and other specialist staff who are required for the provision of air transportation.
- (b) in accordance with the laws and regulations of the other Contracting Party to engage in the sale of air transportation in the area of the other Contracting Party, either directly or through agents. The designated airlines of each Contracting Party shall have the right to sell, and any person shall be free to purchase, such transportation in local currency, if permitted under the laws and regulations of the other Contracting Party, or in any freely convertible other currency.

## ARTICLE 14

### **User Charges**

- (1) The term “user charge” means a charge made to airlines by the competent authorities or permitted by them to be made for the provision of airport property or facilities or of air navigation facilities, including related services and facilities, for aircraft, their crews, passengers and cargo.
- (2) A Contracting Party shall not impose or permit to be imposed on the designated airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.
- (3) Each Contracting Party shall encourage consultation on user charges between its competent charging authorities and airlines using the services and facilities provided by those charging authorities, where practicable through those airlines’ representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made, but the decision of the competent charging authorities of a Contracting Party in respect of user charges shall be final.
- (4) In addition, each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning user charges.

## ARTICLE 15

### **Consultation**

- (1) Either Contracting Party may at any time request consultations on the interpretation, implementation, application or amendment of this Agreement. Such consultations, which may be between the aeronautical authorities of the Contracting Parties or the Contracting Parties themselves, shall begin within 60 days from the date the other Contracting Party receives such request in writing, unless otherwise agreed by the Contracting Parties.
- (2) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall try to settle it by negotiation in accordance with the provisions of paragraph (1) of this Article.

## ARTICLE 16

### **Amendment**

Any amendments to this Agreement agreed by the Contracting Parties shall enter into force when confirmed in writing by the Contracting Parties.

## ARTICLE 17

### **Termination**

One Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of such notice by that other Contracting Party, unless such notice is withdrawn by agreement before the end of this period.

## ARTICLE 18

### **Registration with the International Civil Aviation Organization**

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

## ARTICLE 19

### **Entry into Force**

This Agreement shall enter into force on the date of signature.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done, in duplicate at Hong Kong this 10th day of October 1996 in the English and Hindi languages, both texts being equally authentic.

For the Government of  
Hong Kong:

For the Government of  
the Republic of India:

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## ANNEX

### ROUTE SCHEDULE

#### *Section 1*

Routes to be operated by the designated airline or airlines of Hong Kong:  
Hong Kong – intermediate points – points in India – points beyond.

#### *Notes:*

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of Hong Kong may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin at Hong Kong.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at a point in India or vice versa, except as may from time to time be jointly determined by the Contracting Parties. This restriction also applies to all forms of stopover traffic.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.

#### *Section 2*

Routes to be operated by the designated airline or airlines of the Republic of India:  
Points in India – intermediate points – Hong Kong – points beyond.

#### *Notes:*

1. The points to be served on the routes specified above are to be jointly determined by the Contracting Parties.
2. The designated airline or airlines of the Republic of India may on any or all flights omit calling at any points on the routes specified above, and may serve them in any order, provided that the agreed services on these routes begin at a point in India.
3. No traffic may be taken on board at an intermediate point or at a point beyond and discharged at Hong Kong or vice versa, except as may from time to time be jointly determined by the Contracting Parties. This restriction also applies to all forms of stopover traffic.
4. No point in the mainland of China may be served as an intermediate point or a point beyond.