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**Netherlands (for the European part of the Netherlands)
and
Myanmar**

Air Services Agreement between the Kingdom of the Netherlands and the Republic of the Union of Myanmar (with annex). Rangoon, 27 June 2016

Entry into force: *1 April 2017, in accordance with article 29*

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**Pays-Bas (pour la partie européenne des Pays-Bas)
et
Myanmar**

Accord relatif aux services aériens entre le Royaume des Pays-Bas et la République de l'Union du Myanmar (avec annexe). Rangoon, 27 juin 2016

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Air Services Agreement between the Kingdom of the Netherlands and the Republic of the Union of Myanmar

Preamble

The Kingdom of the Netherlands

and

the Republic of the Union of Myanmar,

hereinafter referred to as the "Contracting Parties";

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

Desiring to contribute to the progress of regional and international civil aviation;

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

Have agreed as follows:

CHAPTER I

INTRODUCTION

Article 1

Definitions

For the purposes of this Agreement, unless otherwise stated:

- a) the term "Aeronautical Authorities" means, in the case of the Republic of the Union of Myanmar, the Department of Civil Aviation of the Ministry of Transport and Communications; in the case of the Kingdom of the Netherlands, the Minister of Infrastructure and the Environment; or in both cases any other authority or person empowered to perform the functions now exercised by the said Authorities;
- b) the terms "Agreed Service" and "Specified Route" mean International Air Service pursuant to this Agreement and the route specified in the Annex to this Agreement respectively;
- c) the term "Agreement" means this Agreement, its Annex drawn up in application thereof, and any amendments to the Agreement or the Annex;
- d) the terms "Air Service", "International Air Service", and "Airline" shall have the meaning respectively assigned to them in Article 96 of the Convention;
- e) the term "Air Transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- f) the term "Capacity" (i) in relation to an aircraft, means the payload of that aircraft available on a route or section of a route; (ii) in relation to an Air Service, means the capacity of the aircraft used on such service multiplied by the frequency operated by such aircraft over a given period on a route or section of a route;
- g) the term "Change of Aircraft" means the operation of one of the Agreed Services by a Designated Airline in such a way that one or more sectors of the Specified Route are flown by different aircraft;

- h) the term "Contracting Party" means a State which has formally agreed to be bound by this Agreement;
- i) the term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94 thereof, insofar as such Annexes and amendments have become effective for both Contracting Parties;
- j) the term "Designated Airline" means an Airline which has been designated and authorized in accordance with Article 3 of this Agreement (Designation and Authorization);
- k) the term "EU Member State" means a State that is now or in the future a Contracting Party to the Treaty on the European Union and the Treaty on the functioning of the European Union;
- l) the term "ICAO" means the International Civil Aviation Organization;
- m) the term "International Air Transportation" means air transportation in which the passengers, baggage, cargo and mail which are taken on board in the Territory of one State are destined for another State;
- n) the term "Price" means any amount, excluding governmental levies, charged or to be charged by the Airline, directly or through its agents, to any person or entity for the carriage of passengers (and their baggage) and cargo (excluding mail) in Air Transportation, including:
 - i. the conditions governing the availability and applicability of a price;
 - ii. the charges and conditions for any services ancillary to such carriage which are offered by the Airline.
- o) the term "Stores" means articles of a readily consumable nature for use or sale on board an aircraft during flight including commissary supplies;
- p) the term "Territory" in relation to either Contracting Party shall be deemed to be the land areas and territorial waters adjacent thereto and airspace there above under the sovereignty, suzerainty, protection or mandate of the Contracting Party;
- q) 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, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo.

CHAPTER II

OBJECTIVES

Article 2

Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating International Air Services on the routes specified in the Route Schedule. Such services and routes are hereinafter called "Agreed Services" and "Specified Routes" respectively.
2. Subject to the provisions of this Agreement, the Airline(s) designated by each Contracting Party shall enjoy the following rights, while operating an Agreed Service on a Specified Route:
 - a) the right to fly without landing across the Territory of the other Contracting Party;
 - b) the right to make stops in the Territory of the other Contracting Party for non-traffic purposes;
 - c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo or mail separately or in combination.
3. The Airlines of each Contracting Party, other than those designated under Article 3 (Designation and Authorization) of this Agreement, shall also enjoy the rights specified in paragraphs 2 (a) and (b) of this Article.
4. Nothing in paragraph 2 of this Article shall be deemed to confer on the Airline(s) of one Contracting Party the privilege of taking up, in the Territory of the other Contracting Party, passengers, cargo or mail carried for remuneration or hire and destined for another point in the Territory of that other Contracting Party (cabotage).

Article 3

Designation and Authorization

1. Either Contracting Party shall have the right, by written notification through diplomatic channels to the other Contracting Party, to designate one or more Airline(s) to operate International Air Services on the routes specified in the Annex and to substitute another Airline for an Airline previously designated.
2. On receipt of such a notification, and of application from the Designated Airline, in the form and manner prescribed for operating authorization and technical permission, each Contracting Party shall, without delay,

grant to the Airline(s) so designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this Article, unless it is not satisfied that:

- a) in the case of an Airline designated by the Kingdom of the Netherlands:
 - i. it is established in the Territory of the Kingdom of the Netherlands under the European Union Treaties and has a valid operating licence in accordance with European Union law; and
 - ii. effective regulatory control of the Airline is exercised and maintained by the EU Member State responsible for issuing its Air Operator's Certificate and the relevant Aeronautical Authority is clearly identified in the designation; and
 - iii. the Airline is owned, directly or through majority ownership, and is effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States;
- b) in the case of an Airline designated by the Republic of the Union of Myanmar:
 - i. it is established in the Territory of the Republic of the Union of Myanmar and has a valid Operating Licence in accordance with applicable law of the Republic of the Union of Myanmar; and
 - ii. effective regulatory control of the Airline is exercised and maintained by the Republic of the Union of Myanmar; and
 - iii. the Airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of the Union of Myanmar and/or by nationals of such State;
- c) the standards set forth in Article 18 (Safety) and Article 19 (Aviation Security) are being maintained and administered;
- d) the Designated Airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operations of International Air Transportation by the Contracting Party considering the application or applications.

3. Upon receipt of the operating authorization of paragraph 2 of this Article, the Designated Airline may at any time begin to operate the Agreed Services, in part or in whole, provided that it complies with the provisions of this Agreement.

Article 4

Revocation and Suspension of Authorization

1. Each Contracting Party shall have the right to withhold, revoke, suspend or limit the operating authorizations of an Airline designated by the other Contracting Party, when:

- a) in the case of an Airline designated by the Kingdom of the Netherlands:
 - i. it is not established in the Territory of the Kingdom of the Netherlands under European Union Treaties or does not have a valid operating licence in accordance with European Union law; or
 - ii. effective regulatory control of the Airline is not exercised or not maintained by the EU Member State responsible for issuing its Air Operator's Certificate or the relevant Aeronautical Authority is not clearly identified in the designation; or
 - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by Member States of the European Union or the European Free Trade Association and/or by nationals of such States;
- b) in the case of an Airline designated by the Republic of the Union of Myanmar:
 - i. it is not established in the Territory of the Republic of the Union of Myanmar or has no valid operating licence in accordance with applicable law of the Republic of the Union of Myanmar; or
 - ii. effective regulatory control of the Airline is not exercised or not maintained by the Republic of the Union of Myanmar; or
 - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by the Republic of the Union of Myanmar and/or by nationals of such State;
- c) in case the Airline has failed to comply with the laws and regulations referred to in Article 16 (Application of Laws, Regulations and Procedures) of this Agreement;
- d) in any case the standards set forth in this Agreement, especially in Articles 18 (Safety) and 19 (Aviation Security) are not being maintained and administered;
- e) in the event of failure by such Airline to qualify before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of International Air Services by these Authorities in conformity with the Convention;
- f) in case the Airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate action is essential to prevent further non-compliance with paragraph 1 of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of receipt of the request.

CHAPTER III
COMMERCIAL PROVISIONS

Article 5

Prices

1. Each Contracting Party shall allow Prices for Air Transportation to be established by each Designated Airline based upon commercial considerations in the marketplace. Intervention by the Contracting Parties shall be limited to:

- a) prevention of unreasonably discriminatory Prices or practices;
- b) protection of consumers from Prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c) protection of Airlines from Prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Each Contracting Party may require notification to or filing with its Aeronautical Authorities of Prices to be charged by the Designated Airline or Airlines of the other Contracting Party for carriage to or from its Territory. Prices may remain in effect unless subsequently disapproved under paragraph 3 below.

3. Neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a Price charged or proposed to be charged by (a) an Airline of either Contracting Party for International Air Transportation between the territories of the Contracting Parties, or (b) an Airline of one Contracting Party for International Air Transportation between the Territory of the other Contracting Party and any other country. If either Contracting Party considers any such Price inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Contracting Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than thirty (30) days after receipt of the request, and the Contracting Parties shall co-operate in securing information necessary for reasoned resolution of the issue. If the Contracting Parties reach agreement with respect to a Price for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the new Price shall not take effect nor continue to be in effect.

Article 6

Commercial Activities

1. The Designated Airline(s) of each Contracting Party shall be allowed:

- a) to establish in the Territory of the other Contracting Party offices for the promotion and sale of Air Services;
- b) in the Territory of the other Contracting Party to engage, directly or through its agents, in the sale of Air Services;
- c) to sell such services and any person shall be free to purchase Air Services in any currency.

2. The Designated Airline(s) of each Contracting Party shall be allowed, on the basis of reciprocity and in accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, to bring in and maintain in the Territory of the other Contracting Party its managerial, commercial, operational and technical staff as it may require in connection with the provision of Air Services.

3. These staff requirements may, at the option of the Designated Airline, be satisfied by its own personnel or by using the services of any other organization, company or Airline operating in the Territory of the other Contracting Party, authorized to perform such services in the Territory of that Contracting Party.

Article 7

Ground Handling

Subject to the laws and regulations of each Contracting Party, each Designated Airline shall have in the Territory of the other Contracting Party the right to perform its own ground handling ("self-handling") or, at its option, the right to select among competing suppliers that provide ground handling services in whole or in part. Where such laws and regulations limit or preclude self-handling and where there is no effective competition between suppliers that provide ground handling services, each Designated Airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers.