AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF INDIA RELATING TO AIR SERVICES

Note The Agreement entered into force, October 22, 1949.

Reference: This Agreement is also published in I DFA TS No. 4, p. 91 and 72 UNTS, p. 191.

The Government of the Republic of the Philippines and the Government of India,

DESIRING to conclude an agreement for the operation of air services, AGREE as follows:—

ARTICLE I

Each Contracting Party grants to the other Contracting Party the right to operate the air services specified in the Annex to this Agreement (hereinafter referred to as the "specified air services") on the routes specified in the said Annex (hereinafter referred to as the "specified air routes").

ARTICLE II

(A) Each of the specified air services may be inaugurated immediately or at a later date at the option of the Contracting Party to whom the rights under this Agreement are granted, on condition that—

(1) the Contracting party to whom the rights have been granted shall have designated an airline or airlines (hereinafter referred to as the "designated airline") for the specified air route concerned, and

(2) the Contracting Party which grants the rights shall have given the appropriate operating permission to the airline concerned pursuant to paragraph (B) of this Article which it shall do with the least possible delay.

(B) A designated airline may be required to satisfy the aeronautical authorities of the Contracting Party granting the rights that it is qualified to fulfill the conditions prescribed by or under the laws and regulations normally applied by those authorities to the operation of international air services.

(C) The operation of each of the specified air services shall be subject to the agreement of the Contracting Party concerned that its route organization

available for civil aviation on the specified air route is adequate for the safe operation of air services.

ARTICLE III

The designated airline of each Contracting Party shall enjoy, while operating the specified air services, the privilege—

(a) to fly across the territory of theParty may therefore make such changes: Provided that notice o£ other Contracting Party without landing,

(b) to land in such territory for non-traffic purposes and,

(c) subject to the provisions of Article IV, to set own or pick up in such territory, at the points specified in the Annex, international traffic originating in or destined for the territory of the former Contracting Party or of a third country on the specified air route concerned.

ARTICLE IV

(A) The aeronautical authorities of the Contracting Parties shall jointly determine in respect of an agreed period the total capacity required for the carriage, at a reasonable load factor, of all traffic, that is to say passengers, cargo and mail, which may reasonably be expected to originate in the territory of each Contracting Party and to be disembarked in the territory of the other Contracting Party on the specified air services to be operated during that period on each of the specified air routes.

(B) Subject to the provisions of paragraph (C) of this Article, each Contracting Party shall have the right to authorize its designated airlines to make available for the carriage of the traffic specified in paragraph (A) of this Article whether on services terminating in or on services passing through the territory of the other Contracting Party half the capacity for the specified air services determined in accordance with the provisions of the said paragraph (A).

(C) (i) If the designated airlines of either Contracting Party are not able or willing to provide the whole of the capacity to which that Contracting Party is entitled in accordance with paragraph (B) of this Article, the aeronautical authorities of the Contracting Parties shall authorize the designated airlines of the other Contracting Party to provide additional capacity equal to the difference between the capacity actually provided by the designated airlines of the first Contracting Party and the capacity to which that Contracting Party is entitled under the said paragraph (B) (hereinafter referred to as "the deficient capacity".)

(ii) If the designated airlines of one Contracting Party which have been providing less than the capacity to which that Contracting Party is entitled become able and willing to provide the whole or part of the deficient capacity, they may serve a notice of not less than six months to this effect on the aeronautical authorities of both Contracting Parties and also on the airlines which have been providing the additional capacity. In such event, and unless both the said aeronautical authorities direct within 30 days of the receipt of the notice that the notice shall not take effect, the latter airlines shall on or before the expiry of the said notice accordingly withdraw the whole or part of the additional capacity which they had been providing and the former airlines shall then provide the deficient capacity or part thereof, as the case may be.

(D) The designated airlines of either Contracting Party may set down and pick up in the territory of the other Contracting Party traffic coming from or destined for third countries on any specified air route, only in accordance with the following provisions:—

(i) If such third country is situated between the territories of the Contracting Parties, any part of the capacity provided by those airlines in accordance with the provisions of paragraphs (A), (B) and (C) of this Article may be used for this purpose.

(ii) If such third country is situated beyond the territory of the other Contracting Party, the capacity that may be used for this purpose shall be such as shall be agreed between the aeronautical authorities of both the Contracting Parties as being unlikely to prejudice unduly, during an agreed period, the interests of the airlines of the other Contracting Party operating between the latter's territory and the third country concerned.

(E) (i) In this Article, "agreed period" means the first six months from the date this Agreement comes into force and, thereafter, every succeeding period of six months unless otherwise agreed between the aeronautical authorities.

(ii) The capacity to be provided shall be discussed in the first instance between the designated airlines of the Contracting Parties and, if possible, agreed between them. The aeronautical authorities of both Contracting Parties shall have the right to be represented at these discussions.

(iii) Any agreement so reached between the designated airlines of the Contracting Parties shall be subject to the approval of the aeronautical authorities of the Contracting Parties. Such approval by the aeronautical authorities shall constitute an agreement as required by paragraphs (A), (C) and (D) of this Article.

(iv) If the aeronautical authorities of the Contracting Parties fail to agree on any matter on which their agreement is required under the provisions of this Article the Contracting Parties themselves shall endeavour to reach agreement thereon. If the Contracting Parties fail to reach such agreement the provisions of Article XI of this Agreement shall apply.

(v) Pending the completion of any review of capacity in accordance with the provisions of this Article the designated airlines of the Contracting Parties shall be entitled to continue to make available the capacities provided on their existing air services.

ARTICLE V

The designated airlines of each Contracting Party may make a change of gauge at a point in the territory of the other Contracting Party on the following conditions:—

(i) that it is justified by reason of economy of operation;

(ii) that the aircraft used on the section more distant from the terminal in the territory of the former Contracting Party are smaller in capacity than those used on the nearer section;

(iii) that the aircraft of smaller capacity shall be scheduled to connect with the aircraft of larger capacity and shall arrive at the point of carrying traffic transferred from, or to be transferred into, the aircraft of larger capacity; and

(iv) that the provisions of Article IV shall govern all arrangements made with regard to change of gauge.

ARTICLE VI

(A) The tariffs to be charged for the carriage of passengers and cargo on any of the specified air services shall be fixed at reasonable levels, due regard being paid to all relevant factors, including economical operation, reasonable profit, difference of characteristics of service (including standards of speed and accommodation) and the tariffs charged by other airlines on the route or section thereof concerned.

(B) The tariffs in respect of each route and each section thereof shall be agreed between the designated airlines concerned in consultation with other airlines operating on the same route or section and shall have regard to any relevant rates adopted by the International Air Transport Association. The tariffs so agreed shall be subject to the approval of the aeronautical authorities of both Contracting Parties, except that the approval of the aeronautical authorities of a Contracting Party shall not be necessary in respect of tariffs for a route or section in which no designated airline of that Contracting Party is concerned. In the event of disagreement between the designated airlines concerned or in case the aeronautical authorities do not approve the tariffs as required under this paragraph, the Contracting Parties shall endeavor to reach agreement between themselves failing which the dispute shall be dealt with in accordance with Article XI.

Pending determination of the tariffs in accordance with this Article, the tariffs already in force shall prevail.

(C) Nothing in this Article shall be deemed to prevent either Contracting Party, in agreement with the other Contracting Party, from bringing into force tariffs fixed in accordance with practice recommended from time to time by the International Civil Aviation Organization.

ARTICLE VII

(A) Supplies of fuel, lubricating oils, spare parts, regular equipment and aircraft stores introduced into or taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and remaining on board on departure from the last airport of call in that territory shall be accorded, with respect to customs duty, inspection fees or similar charges, treatment not less favorable than that granted by the second Contracting Party to its national airlines engaged in international public transport: Provided that neither Contracting Party shall be obliged to grant to the designated airlines of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airlines of the first Contracting Party.

(B) If, in the opinion of the aeronautical authorities of one of the Contracting Parties, the administration of regulations relating to customs, immigration, quarantine and similar matters in the territory of the other Contracting Party imposes an onerous burden on its designated airlines in the operation of the air services pursuant to this Agreement, the aeronautical authorities of such other Contracting Party shall, upon request, enter into consultation to examine the situation.

ARTICLE VIII