

Air Services Agreement

between

the Government of the Kingdom of Denmark

and

the Government of the Republic of Cuba

The Government of the Kingdom of Denmark and the Government of the Republic of Cuba, hereinafter referred to as the “Contracting Parties”,

Being parties to the Convention on International Civil Aviation and the International Air Services Transit Agreement opened for signature at Chicago on the seventh day of December 1944, and

Desiring to conclude an Agreement, in conformity with the said Convention, for the main purpose of establishing scheduled air services between their respective territories;

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement:

- (a) "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 of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties;
- (b) "aeronautical authorities" means, in the case of the Kingdom of Denmark, the Ministry of Transport; and in the case of the Republic of Cuba, the President of the Institute of Civil Aeronautics of Cuba; or in either case any person or body authorized to perform any particular function to which this Agreement relates;
- (c) "designated airline", means an airline which has been designated in accordance with Article 3 of this Agreement;
- (d) "territory", in relation to each Contracting Party, means the land areas and territorial waters adjacent thereto and under the sovereignty of that Contracting Party;

- (e) "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meaning laid down in Article 96 of the Convention;
- (f) "Agreement" means this Agreement, its Annexes and any amendments thereto;
- (g) "Annex" means any Annex to this Agreement or as amended in accordance with the provisions of paragraph 2 of Article 16 of this Agreement. The Annexes form an integral part of this Agreement and all references to the Agreement include the Annexes unless otherwise stated;
- (h) "tariff" means the prices to be paid for the carriage of passengers and baggage, and the conditions under which those prices apply, including prices and conditions for other services performed by the carrier in connection with the air transportation, and including remuneration and conditions offered to agencies, but excluding remuneration or conditions for the carriage of mail;
- (i) "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 crew, passengers and cargo.

Article 2
Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by airlines designated by the other Contracting Party:

- (a) to fly across its territory without landing,
- (b) to make stops in its territory for non-traffic purposes,
- (c) to make stops in the said territory at the points specified in the Annexes to this Agreement for the purpose of taking on board and discharging - in international traffic - passengers, cargo and mail, separately or in combination.

2. Nothing in paragraph 1 of this Article shall be deemed to confer on a designated airline of one Contracting Party the right of taking on board - in the territory of the other Contracting Party - passengers, cargo, and mail carried for remuneration or hire and destined for another point in the territory of that Contracting Party.

3. The airlines of each Contracting Party, other than those designated under Article 3, shall also enjoy the rights specified in paragraph 1 (a) and (b) of this Article.

Article 3

Designation and Authorization of Airlines

1. Each Contracting Party shall have the right to designate through diplomatic notes to the other Contracting Party one or more airlines for the purpose of operating air services on the routes specified in the Annexes and to withdraw or alter such designations.
2. On receipt of such designation the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, without undue delay grant to a designated airline the appropriate operating authorization.
3. 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 and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.
4. Each Contracting Party shall have the right to refuse to grant the operating authorization 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 2, in any case where it is not satisfied that effective control of that airline is maintained in the territory of the other Contracting Party and that the airline is incorporated and has its principal place of business in the said territory.

5. When an airline has been so designated and authorized, it may begin to operate air services on the routes specified in the Annexes provided that the airline complies with all applicable provisions of this Agreement.

Article 4

Revocation of Authorization, Suspension of Rights, and Imposition of Conditions

1. Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 2 by an airline designated by the other Contracting Party, or to impose such conditions, as it may deem necessary, on the exercise of these rights:

- (a) in any case where it is not satisfied that effective control of that airline is maintained in the territory of the other Contracting Party and that the airline is incorporated and has its principal place of business in the said territory;
- (b) in the case of failure by that airline to comply with the laws and regulations of the Contracting Party granting this authorization or these rights; or

(c) in the case that the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

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

Such consultations shall be held within thirty (30) days from the date the other Contracting Party receives such request in writing.

Article 5

Utilization of Airports and Facilities

1. Neither Contracting Party shall impose on a designated airline of the other Contracting Party user charges higher than those imposed on its own airlines operating between the territories of the Contracting Parties.

Any air navigation facility charge imposed on international traffic performed by airlines licensed by one of the Contracting Parties, shall be reasonably related to the cost of service rendered to the airline concerned, and levied in accordance with the relevant guidelines issued by the International Civil Aviation Organization (ICAO).

2. When operating the agreed air services, the same uniform conditions shall apply to the use by the airlines of both Contracting Parties of airports as well as of all other facilities under their control.

3. Each Contracting Party shall encourage consultations on user charges between its competent charging authorities and the airlines using the services and facilities provided by those charging authorities, where practicable through those airlines' representative organizations. Reasonable notice of any proposals for changes in such charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning such charges.

Article 6

Customs Duties

1. Aircraft operated on international air services by a designated airline of either Contracting Party, as well as its regular equipment, supplies of fuel and lubricants and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other duties or taxes on arriving in the territory of the other Contracting Party, provided such equipment, supplies and stores remain on board the aircraft up to such time as they are re-exported.

2. With the exception of charges based on the cost of the service provided, the following items shall also be exempt from duties, inspection fees and charges referred to in paragraph 1 of this Article:

- (a) aircraft stores, introduced into or supplied in the territory of a Contracting Party, and taken on board, within reasonable limits, for use on outbound aircraft engaged in an international air service of a designated airline of the other Contracting Party;
- (b) spare parts, including engines, introduced into the territory of a Contracting Party for the maintenance or repair of aircraft used in an international air service of a designated airline of the other Contracting Party; and
- (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft engaged in an international air service of a designated airline of the other Contracting Party, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board.

3. The items referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided for by this Article shall also apply in situations where a designated airline of one Contracting Party has entered into

arrangements with other airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article, provided such other airlines similarly enjoy such exemptions from the other Contracting Party.

5. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft of either Contracting Party, may be unloaded in the territory of the other Contracting Party only with the approval of its customs authorities. Such items may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

Article 7

Entry Clearance Regulations

1. Passengers in transit across the territory of either Contracting Party shall be subject to no more than a very simplified customs and immigration control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

2. The laws and regulations of one Contracting Party regarding entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by the designated airlines of the other Contracting Party and by or on behalf of passengers, crew, cargo and mail, upon transit of, admission to, departure from and while within the territory of such a Contracting Party.

3. Neither Contracting Party may grant any preference to its own or any other airline over the designated airline of the other Contracting Party in the application of the laws and regulations provided for in this Article.

Article 8

Capacity Provisions

1. Each Contracting Party shall allow fair and equal opportunity for the designated airlines of both Contracting Parties to compete in the international air transportation covered by this Agreement.

2. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Contracting Party.

3. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Contracting Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

In the event that the Aeronautical Authority of one Contracting Party has any other objections with respect to the capacity operated by a designated airline, this Aeronautical Authority shall notify the Aeronautical Authority of the other Contracting Party, and any of them may request consultations in compliance with Article 15 of this Agreement, in an effort to solve this matter. If the Aeronautical Authorities of both Contracting Parties agree, they shall take the proper measures for the implementation of their agreement.

4. Neither Contracting Party shall impose on the other Contracting Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.

Article 9

Tariffs

1. Tariffs shall be established at reasonable levels, due regard being paid to all relevant factors including costs of operation, reasonable return on investment, characteristics of service and the interests of users. The application of tariffs shall be subject to applicable competition rules and regulations.

2. The designated airlines are only required to file for approval a proposed tariff established for use jointly by two or more airlines for carriage between the territories of the Contracting Parties. The tariff shall only be filed with the

aeronautical authorities from whose territory the tariff is to be applied and in such a form as those aeronautical authorities may require (country of origin principle). Such filing is to be received by the aeronautical authorities at least fourteen (14) days before the tariff's proposed date of effectiveness. This time limit may be reduced, subject to the consent of the said authorities.

3. When a designated airline of one Contracting Party has filed such joint tariff with the aeronautical authorities of the other Contracting Party, from whose territory the tariff is to be applied, such tariff will be treated as having been approved, unless within fourteen (14) days after the date of receipt of filing the aeronautical authorities of the latter Contracting Party have served a written notice of disapproval to the former Contracting Party.

4. Nevertheless, a tariff filed in accordance with the provisions in paragraph 2 of this Article which is still in force one year or more after the date of its filing may be reconsidered and thereafter disapproved at any time by the aeronautical authorities of the Contracting Party from whose territory the tariff is to be applied.

5. The tariffs to be charged for any agreed 5th freedom traffic pursuant to this agreement by a designated airline of one Contracting Party shall be subject to the requirements of the other Contracting Party regarding establishment of tariffs. The designated airlines have the right to match the approved tariffs of any airline between the same points on such sectors.

6. The aeronautical authorities from whose territory a tariff is to be applied may - for information purposes only - require submission of any applicable tariffs in such a way as those aeronautical authorities may require.

7. The aeronautical authorities of either Contracting Party may, at any time, request consultations with the aeronautical authorities of the other Contracting Party on the application of the provisions of this Article. Such consultations shall be held within thirty (30) days from receipt of the request.

Article 10

Transfer of Earnings

Each designated airline shall have the right to convert and remit to its country on demand local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted without restrictions at the rate of exchange applicable to current transactions which is in effect at the time such revenues are presented for conversion and remittance, and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

Article 11

Airline Representation

1. Each Contracting Party grants to a designated airline of the other Contracting Party, on the basis of reciprocity, the right to maintain in its territory representatives including office, administrative, commercial and technical personnel as may be necessary for the requirements of the designated airline concerned.

2. The designated airlines of a Contracting Party shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party, either directly or through agents. A Contracting Party shall not restrict the right of the designated airlines of the other Contracting Party to sell, and of any person to purchase, such transportation in local or in any freely convertible currency. Nor shall a Contracting Party restrict the right of a designated airline of the other contracting Party to pay in local or in any freely convertible currency its locally incurred costs taking into account the regulation in effect in the country for this matter.

Article 12

Approval of Flight Schedules

1. Airlines designated by a Contracting Party shall submit their traffic programmes for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the beginning of the operation. The programme shall include in particular the timetables, the frequency of the services and the types of aircraft to be used.
2. Any alteration made in an approved air traffic programme at a later date shall also be submitted for approval.

Article 13

Aviation Safety

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at

that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement.

3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the airline or airlines of one Contracting Party on services to or from the territory of another Party, may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.

4. If any such ramp inspection or series of ramp inspections gives rise to:

- (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
- (b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licenses in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

5. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of one Contracting Party in accordance with paragraph 3 above is denied by the representative of that airline or airlines, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 4 above arise and draw the conclusions referred in that paragraph.

6 Each Contracting Party reserves the right to suspend or vary the operating authorization of an airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

7. Any action by one Contracting Party in accordance with paragraphs 2 or 6 above shall be discontinued once the basis for the taking of that action ceases to exist.

Article 14
Aviation Security

1. The Contracting Parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful interference - especially their obligation in compliance with the Chicago Convention and any other agreement or document to which they are or may be part - form an integral part of this Agreement.

2. The Contracting Parties shall provide upon request all necessary assistance to each other 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 aviation security provisions established by the International Civil Aviation Organization and designated as Annexes to the Convention to the extent that such security provisions are applicable to the Parties; the Contracting Parties shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

In this paragraph, reference to the provisions on aviation security includes any difference notified by the relevant Contracting Party. Each Contracting Party shall supply information in advance to the other Contracting Party of its intention to notify any difference.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within, the territory of that other Contracting Party.

Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo, mail and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

5. If 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, airport or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof with the minimum risk for the lives of the people involved.

Article 15
Consultations

Either Contracting Party may at any time request consultations on the implementation, interpretation or amendment to this Agreement or compliance with the Agreement. Such consultations, which may be between aeronautical authorities, shall begin within a period of sixty (60) days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

Article 16
Amendments

1. Any amendments to this Agreement agreed by the Contracting Parties shall come into force when approved in accordance with the constitutional requirements of both Contracting Parties and as confirmed by an exchange of diplomatic notes.

2. Amendments to the Annexes to this Agreement may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties.

Article 17

Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall endeavour to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement of the dispute by negotiation, they may agree to refer the dispute for decision to an arbitrator, or the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases, the third arbitrator shall be a national of a third State, shall act as president of the tribunal and shall determine the place where the arbitration will be held. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the most

Senior Vice-President who is not disqualified on that ground shall make the appointment. The arbitral tribunal shall reach its decision by a majority of votes.

3. Each Contracting Party shall bear the costs of the arbitrator it has nominated as well as of its representation in the arbitral proceeding. The cost of the president and any other costs shall be born in equal parts by the Contracting Parties.

4. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

5. If and as long as either Contracting Party fails to comply with any decision under paragraph 2 of this Article, the other Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in default or to a designated airline in default.

Article 18
Registration

This Agreement, its Annexes and any subsequent amendments thereto shall be submitted by the Contracting Parties to the International Civil Aviation Organization.

Article 19
Termination

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 20

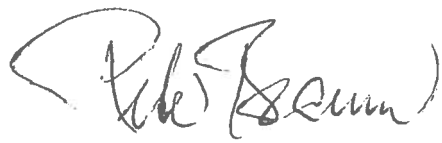
Entry into Force

This Agreement shall enter into force provisionally on the date of its signing and definitely on the date that both Parties have notified each other through diplomatic channels of the completion of their respective legal requirements for its entry into force.

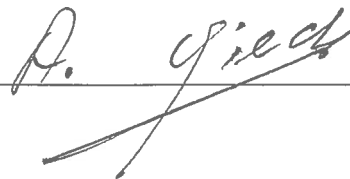
In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Havana, Cuba, on February 21, 2001
in duplicate in the English, Spanish and Danish languages. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
THE KINGDOM OF DENMARK



FOR THE GOVERNMENT OF
THE REPUBLIC OF CUBA



ANNEX

1. a) Routes to be operated in both directions by the airlines designated by the Government of the Kingdom of Denmark:

Column 1

Column 2

Points in Denmark

Points in Cuba

- b) Routes to be operated in both directions by the airlines designated by the Government of the Republic of Cuba:

Column 1

Column 2

Points in Cuba

Points in Denmark

2. Nothing will prevent a designated airline of either Contracting Party to serve intermediate and/or beyond points, provided that no commercial rights are exercised between those points and the territory of the other Contracting Party.

However, the carriage of own stop-over traffic on such sectors shall be permitted.

3. The exercise of any 5th freedom rights would have to be agreed upon between the competent aeronautical authorities of the Contracting Parties.

4. In operating or holding out services on the agreed routes, any designated airline of one Contracting Party may enter into co-operative marketing arrangements such as blocked-space or code sharing arrangements, with
 - a) an airline or airlines of either Contracting Party; or
 - b) an airline or airlines of a third Party. Such arrangements are subject to approval on a case-by-case basis by the Aeronautical Authorities of the Contracting Parties.

The above provisions are subject to the conditions that all airlines in such arrangements 1) hold the appropriate route rights and 2) meet the requirements applied to such arrangements regarding information to customers and filing procedures.