



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN  
DEVELOPMENT AND PUBLIC WORKS**

**EXPLANATORY MEMORANDUM TO RATIFICATION OF BILATERAL  
AIRSERVICES AGREEMENTS BETWEEN KENYA AND CZECH  
REPUBLIC; CYPRUS; CHILE; BELIZE; SURINAME; TANZANIA;  
AUSTRIA AND BARBADOS**

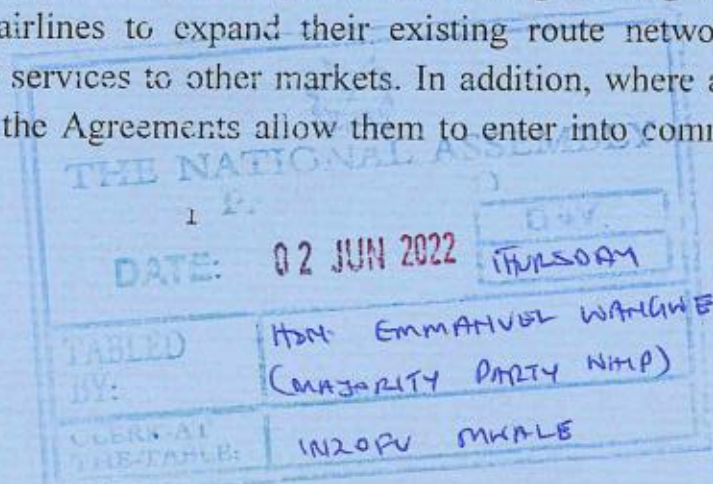
**The objects and subject matters of the Agreements**

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations created with the signing in Chicago, on 7<sup>th</sup> December, 1944, of the Convention on International Civil Aviation and is charged with administration of the principles laid out in the Convention.

The 96 Articles of the Chicago Convention establish the privileges and restrictions of all Contracting States. The Convention accepts the Principles that every State has complete and exclusive sovereignty over the airspace above its territory and provides that no scheduled international air service may operate over or into the territory of a Contracting State without its consent.

Bilateral Air Services Agreements between Kenya and various Countries are established to enable Kenyan Air Operators such as Kenya Airways to provide scheduled air services and expand their existing route network. In addition, the Agreements allow foreign carriers to access the Kenyan market.

The Agreements were negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for countries within Africa and on the basis of fair and equal opportunity and reciprocity for other countries. The strategic national interests of Kenya are paramount during the negotiations. These Agreements enable airlines to expand their existing route networks by directly operating scheduled services to other markets. In addition, where airlines are unable to offer services the Agreements allow them to enter into commercial





arrangements such as codeshare agreements, which allow airlines to grow the demand in other markets by putting their code on other carriers thereby offering seamless connectivity to the travelling public.

**(a) Any Constitutional implications**

**(i) Any proposed amendment to the Constitution;**

There is no proposed amendment to the Constitution.

**(ii) Consistence with the Constitution and Promotion of Constitutional values and objectives**

The Bilateral Air Services Agreements between Kenya and Czech Republic; Cyprus; Chile; Belize; Suriname; Tanzania; Austria and Barbados are consistent with the Constitution and promote constitutional values and objectives.

**(b) The National Interests which may be affected by the ratification of the Agreements;**

These are new Agreements with exception of Tanzania, hence no Kenyan carrier has operates on the routes. Similarly, there are no airlines operating scheduled air services into the country from any of the subject States except Tanzania.

Kenya Airways, Astral Aviation, Jambojet and Fly 540, do operate into Tanzania. Similarly, Precision Air and Air Tanzania operate scheduled air services into Kenya.

It is in the interest of the Country to ratify the eight Agreements.

**(c) Obligations imposed on Kenya by Ratification of the Agreements;**

There is no additional obligation that will be imposed on Kenya by the ratification of the Agreements.

**(d) Requirements for implementation of the Agreements**

The instruments of ratification of the Agreements shall be deposited with International Civil Aviation Organization for registration.



#### **(e) Policy and legislative consideration**

The Agreements were negotiated in line with the Integrated National Transport Policy which indicates that Kenya is keen to liberalize new and existing Agreements on the basis of the Yamoussoukro Decision for countries within Africa and on the basis of fair and equal opportunity and reciprocity for other countries.

The Agreements are based on a standard template issued by the International Civil Aviation Organization (ICAO) and contains standard Articles on Grant of Rights; Designation; Authorization; Application of National Laws; Recognition of Certificates and Licenses; Aviation Safety and Security; Customs Duties and other Charges; amongst others.

In order to operationalize an Agreement it is the practice for the delegations representing the concerned States to sign a Memorandum of Understanding (MoU) that gives force to the Agreement as it awaits the formal signing by the aeronautical authorities i.e. Cabinet Secretaries or Ministers in charge of Civil Aviation. In other instances the Agreements contain clauses that require the signing of the Agreement prior to entry into force.

#### **(f) Financial Implications**

The ratification of the Agreements will be incorporated into existing institutional frameworks that the State Department for Transport has made provision for.

There are no budgetary changes envisaged in terms of financial implications.

#### **(g) Ministerial responsibility**

The Cabinet Secretary exercises powers conferred by Section 52 (f) of the Civil Aviation Act No. 21 of 2013 as well as the Executive Order No. 1 of 2020.

Further, the Cabinet Secretary enforces the provisions of the Bilateral Air services Agreements as well as reviewing the existing agreements in line with the Medium Term Expenditure Plan.

#### **(h) Implications on matters relating to counties**

Civil Aviation falls under the National Government functions as provided for in Section 18 of the Fourth Schedule of the Constitution which deals with the distribution of functions between National and County Government therefore it's not a matter concerning counties.



**(i) The summary of the process leading to the adoption of the Agreements**

**1) Kenya/Czech Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Czech Republic was negotiated and initialed on 12<sup>th</sup> December, 2018 in Nairobi. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designation(s) of airlines, fourteen (14) frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

**2) Kenya/Cyprus Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Cyprus was negotiated and initialed on 3<sup>rd</sup> December, 2019 in Jordan. It was operationalized by the signing of Agreed Minutes.

The Agreement provides for designation of upto three (3) airlines, seven (7) frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of the 5th freedom Traffic rights is subject to approval by the respective aeronautical authorities.

**3) Kenya/Chile Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Chile was negotiated and initialed on 10<sup>th</sup> December, 2018 in Nairobi. It was operationalized by the signing of a Memorandum of Understanding.

The Agreement provides for multiple designation(s) of airlines, unlimited frequencies, no restriction on aircraft capacity and an open and liberal route schedule.



#### **4) Kenya/Belize Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Belize was negotiated and initialed on 9<sup>th</sup> December, 2021 in Colombia. It was operationalized by the signing of a Record of Discussion.

The Agreement provides for multiple designation(s) of airlines, unlimited frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of fifth Freedom Traffic Rights shall be subject to approval by the Aeronautical Authorities of both Parties.

It also provides for stop-over traffic at any point of the route schedule, provided that the stop-over time does not exceed fifteen (15) days at any point.

#### **5) Kenya/Suriname Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Suriname was negotiated and initialed on 8<sup>th</sup> December, 2021 in Colombia. It was operationalized by the signing of a Record of Discussion.

The Agreement provides for multiple designation(s) of airlines, unlimited frequencies, no restriction on aircraft capacity and an open and liberal route schedule. Exercise of fifth Freedom Traffic Rights shall be subject to approval by the Aeronautical Authorities of both Parties.

#### **6) Kenya/Tanzania Bilateral Air Services Agreement**

The Kenya/Tanzania BASA was negotiated and initialed on 24<sup>th</sup> November, 2016 in Nairobi.

The Agreement is modeled on the ICAO template and is aimed at enabling designated airlines of either State to operate scheduled services between Kenya and Tanzania within the agreed provisions.

The agreement provides for multiple designation of airlines, unlimited frequencies and capacity, codes share services and a limited route schedule.



### **7) Kenya/Austria Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Austria was negotiated and initialed on 3<sup>rd</sup> December, 2019 in Aqaba, Jordan.

The Agreement is modeled on the ICAO template and is aimed at enabling designated airlines of either State to operate scheduled services between Kenya and Austria within the agreed provisions.

The Agreement provides for multiple designation of airlines, code share services, an open and liberal route schedule and exercise of Fifth Freedom Traffic Rights may be agreed upon by the aeronautical authority of the two Contracting Parties.

### **8) Kenya/Barbados Bilateral Air Services Agreement**

The Bilateral Air Services Agreement between Kenya and Barbados was formally signed on 6<sup>th</sup> October, 2021 during the State visit of H. E. the President.

The Agreement had not been taken through the ratification process as outlined in the Treaty Making and Ratification Process Act 2012.

The Agreement provides for multiple designation of airlines, code share services, an open and liberal route schedule and exercise of Fifth Freedom Traffic Rights may be agreed upon by the aeronautical authority of the two Contracting Parties.

### **(j) The number of States that are party to the Agreements**

The Agreements are on a bilateral basis between Kenya and Czech Republic; Cyprus; Chile; Belize; Suriname; Austria; Tanzania and Barbados.

### **(K) The views of the public on the ratification of the Agreements**

These Agreements are negotiated by a team comprising representatives from the Ministry of Foreign Affairs, Office of the Attorney General and Department of Justice, Kenya Civil Aviation Authority, Kenya Airports Authority, Kenya Tourism Board, Kenya Airways and other local operators.



**(l) Whether the Agreements sought to be ratified permit reservations and any recommendations on reservations and declarations**

The Agreements do not allow for reservations. However, they can be amended through mutual agreement by the Contracting Parties.

There are no recommendations for reservation of the Agreements.

**(m) The proposed text of any reservations that should be entered when ratifying the Agreements in order to protect or advance national interests or ensure conformity with the Constitution**


The Agreements do not require any reservation.

**(n) Whether expenditure of public funds will be incurred in implementing the Agreements and an estimate, where possible, of the expenditure**

The implementation of the Agreements has minimal implication on Public funds as it is limited to approval and enforcement of the airline schedules.

**(o) Monitoring and review**

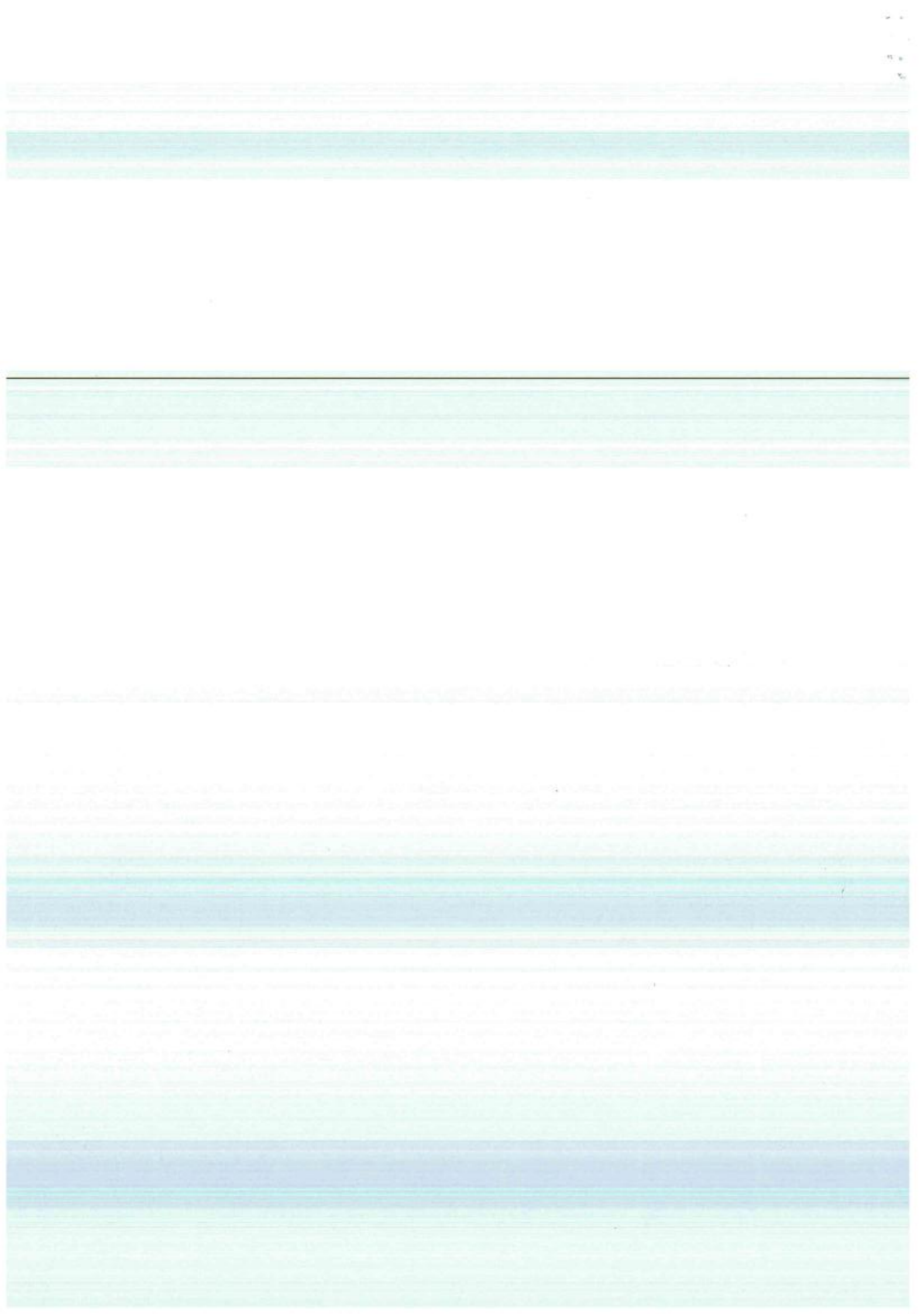
The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the Kenya Civil Aviation Authority monitor and review the implementation of the Bilateral Air Services Agreements.



James W. Macharia, EGH  
**CABINET SECRETARY**

Date .....26. 05. 2022.....







# Record of Discussions

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Delegations representing the aeronautical authorities of the Czech Republic and the Republic of Kenya (hereinafter referred to as "delegations") met in Bogotá, Colombia, on 6 December 2021 in the course of the ICAO Air Services Negotiation Event (ICAN) to discuss current bilateral relations in the field of civil aviation between the two countries.

The list of members of both delegations is attached as **Appendix 1**.

The discussions were held in a cordial and friendly atmosphere.

## Air Services Agreement

The delegations discussed a preparedness of both sides to sign the Air Services Agreement between the Czech Republic and the Republic of Kenya (hereinafter referred to as "ASA"). Both delegations confirmed the completion of its internal approval procedures, nevertheless some internal preparatory work before signature still has to be done.

Both delegations have proposed minor changes to the text of ASA from 2018 and mutually agreed on the final text as attached in **Appendix 2**.

Both delegations explored possibilities for signature of ASA and will stay in close contact to coordinate relevant steps towards signature in due course.

Signed in Bogotá, Colombia, on 6 December 2021.

For the delegation  
of the Czech Republic



Marek Skrna

For the delegation  
of the Republic of Kenya



Nicholas Bodo







Delegation of the Czech Republic

Mr. Marek Skrna	Deputy Director Civil Aviation Department Ministry of Transport
Mr. Tomas Vokaty	Head of delegation Air Transport Negotiator Civil Aviation Department Ministry of Transport
Mr. Petr Cecak	Air Transport Negotiator Civil Aviation Department Ministry of Transport
Mr. Milan Beranek	Deputy Director International Law Department Ministry of Foreign Affairs

Delegation of the Republic of Kenya

Mr. Bodo Nicholas Otieno	Director, Air Transport State Department of Transport Head of Delegation
Ms. Rugut Angelah Cherotich	Assistant Director, Air Transport State Department of Transport
Ms. Mbugua Racheal Nyambura	State Counsel Office of Attorney General and Department of Justice
Ms. Elizabeth Choge	Chief State Counsel Ministry of Foreign Affairs
Mr. Joseph Koech	Ag. Manager, Air Transport Kenya Civil Aviation Authority
Ms. Ettah Muango	Legal Counsel Kenya Airports Authority
Mr. Yagomba William	Aviation Expert Safari Express Cargo Ltd.
Mr. Isaac Mwangi	Manager Government and Industry Affairs Kenya Airways PLC






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**AIR SERVICES AGREEMENT**  
**BETWEEN**  
**THE CZECH REPUBLIC**  
**AND**  
**THE REPUBLIC OF KENYA**







## **PREAMBLE**

The Czech Republic and the Republic of Kenya hereinafter referred to as the Contracting Parties;

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

Desiring to contribute to the progress of international civil aviation;

Desiring to guarantee the highest level of safety and security in international air transport;

Desiring to conclude an Agreement between the Czech Republic and the Republic of Kenya for Air Services;

Have agreed as follows:







**CHAPTER I**  
**INTRODUCTION**

**ARTICLE 1**  
**Definitions**

1. For the purpose of this Agreement:
  - a. the term "Aeronautical Authorities" means for the Czech Republic, the Ministry of Transport; and for the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation; or, in either case, any person or body authorized to perform any functions at present 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 as well as any amendment to the Agreement or to its Annex;
  - d. the terms "Air Service", "International Air Service", "Airline" shall have the meaning respectively assigned to them in Article 96 of the Convention;
  - e. 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;
  - f. the term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes any Annex adopted under Article 90 of the Convention and any amendment of the Annexes or the Convention under Articles 90 and 94 thereof, insofar as those Annexes and amendments have become effective for both Contracting Parties;
  - g. the term "Designated Airline" means the Airline which has been designated and authorized in accordance with Article 3 (Designation and Authorization) of this Agreement;
  - h. the term "Stores" means articles of a readily consumable nature for use or sale on board an aircraft during flight;
  - i. the term "Tariff" means any amount charged or to be charged by Airlines, directly or through their 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 Tariff; and
    - ii. the charges and conditions for any services ancillary to such carriage which are offered by Airlines;
  - j. the term "Territory" has the meaning assigned to it in Article 2 of the Convention.





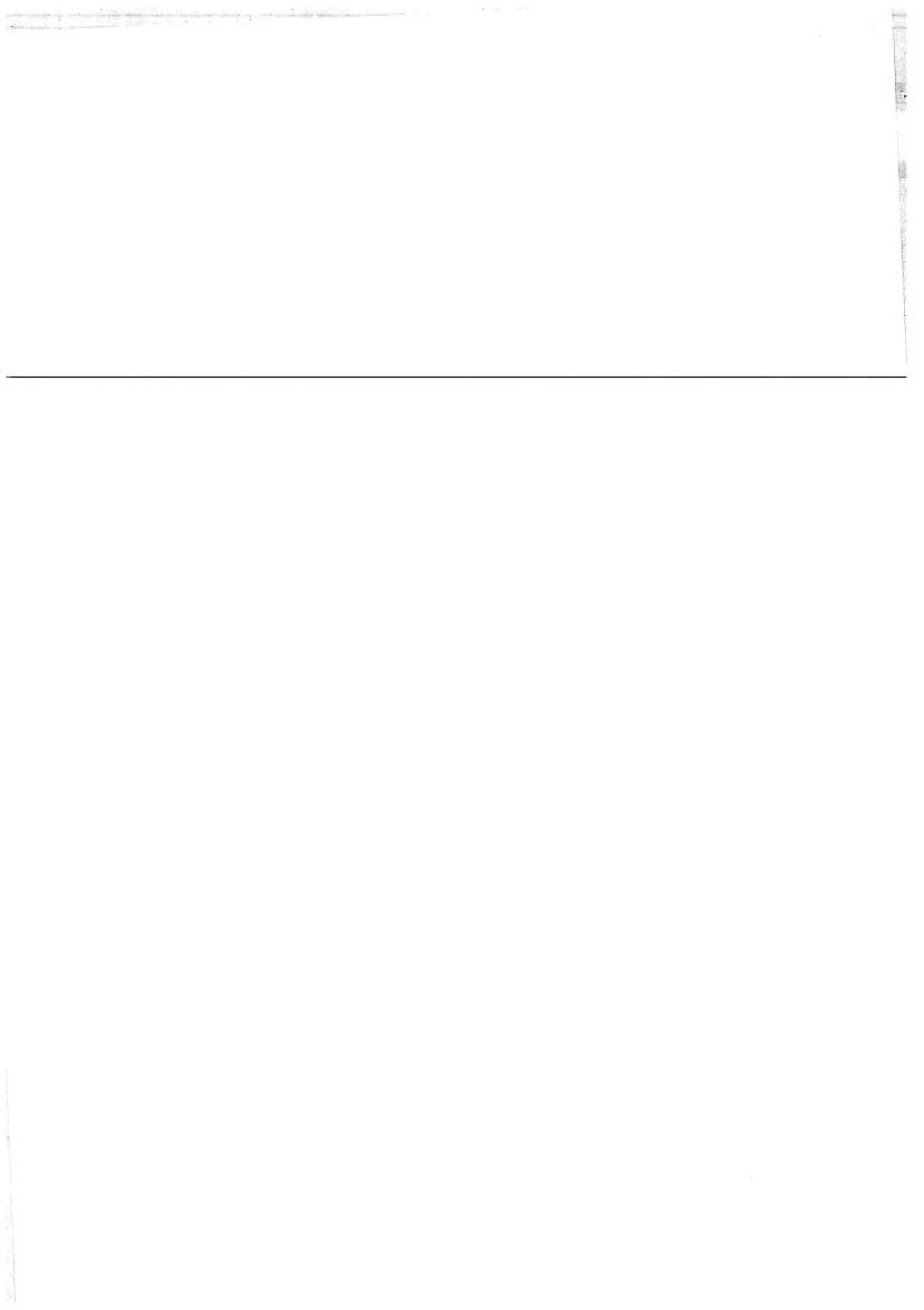
- k. the term "User Charge" means a charge imposed on Airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities;
- l. the term "Capacity" means the amount of services provided under the Agreement, usually measured in the number of frequencies or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a Specified Route during a specific period, such as daily, weekly, seasonally or annually;
- m. the term "European Union Member state" means a state that is a Party to the Treaty on the European Union and the Treaty on the functioning of the European Union;
- n. references in this Agreement to "nationals of the Czech Republic" shall be understood as referring to nationals of European Union Member States;
- o. references in this Agreement to "Airlines of the Czech Republic" shall be understood as referring to Airlines designated by the Czech Republic;
- p. references in this Agreement to the "EU Treaties" shall be understood as referring to the Treaty on European Union and the Treaty on the Functioning of the European Union.

## **CHAPTER II** **OBJECTIVES**

### **ARTICLE 2** **Grant of Rights**

1. Each Contracting Party grants to the other Contracting Party, except as otherwise specified in the Annex, the following rights for the conduct of International Air Services by the Designated Airlines of the other Contracting Party:
  - a. the right to fly across its Territory without landing;
  - b. the right to make stops in its Territory for non-commercial purposes; and
  - c. while operating an Agreed Service on a Specified Route, the right to make stops in its Territory for the purposes of taking up and discharging international traffic in passengers, baggage, cargo and mail, separately or in combination.
2. 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 paragraph 1 a) and b) of this Article.
3. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Contracting Party's Designated Airlines to participate in commercial air transportation between points in the Territory of the other Contracting Party (cabotage).





**ARTICLE 3**  
**Designation and Authorization**

1. Either Contracting Party shall have the right to designate, by written notification through diplomatic channels to the other Contracting Party, one or more Airlines for the purpose of operating the Agreed Services on the Specified Routes and to withdraw the designation of any Airline or to substitute another Airline for one previously designated.
2. Upon receipt of such a notification and of applications from the Designated Airlines in the form and manner prescribed for operating authorizations, each Contracting Party shall, without delay, grant to the Airlines so designated by the other Contracting Party the appropriate operating authorizations subject to the provisions of this Article, provided that:
  - a. in the case an Airline is designated by the Czech Republic:
    - i. the Airline is established in the Territory of the Czech Republic under the EU 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 European Union 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 an Airline is designated by the Republic of Kenya:
    - i. the Airline is established in the Territory of the Republic of Kenya and has a valid Operating Licence in accordance with applicable law of the Republic of Kenya; and
    - ii. effective regulatory control of the Airline is exercised and maintained by the Republic of Kenya; and
    - iii. the Airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya;
  - c. the Contracting Party designating the Airline is maintaining and administering the standards set forth in Article 8 (Fair Competition), Article 15 (Safety) and Article 16 (Aviation Security) of this Agreement; and
  - d. the Designated Airlines are qualified to meet the conditions prescribed under the laws and regulations normally applied to the operations of





International Air Services by the Contracting Party considering the applications.

3. Upon receipt of the operating authorization of paragraph 2 of this Article, the Designated Airlines may at any time begin to operate the Agreed Services, in part or in whole, provided that the Airlines comply with the provisions of this Agreement.
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 fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operations of International Air Services.

#### **ARTICLE 4**

##### **Revocation and Suspension of Authorization**

1. Either Contracting Party may revoke, withhold, suspend or limit the operating authorization or technical permissions of an Airline designated by the other Contracting Party where:
  - a. in the case an Airline is designated by the Czech Republic:
    - i. the Airline is not established in the Territory of the Czech Republic under EU 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 European Union 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 an Airline is designated by the Republic of Kenya:
    - i. the Airline is not established in the Territory of the Republic of Kenya or has no valid Operating Licence in accordance with applicable law of the Republic of Kenya; or
    - ii. effective regulatory control of the Airline is not exercised or not maintained by the Republic of Kenya; or
    - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya;
  - c. in case the other Contracting Party is not maintaining and administering the standards set forth in Article 8 (Fair Competition), Article 15 (Safety) and Article 16 (Security); or





- d. 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;
2. Unless immediate action is essential to prevent further non-compliance with the conditions as referred to in 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.
3. This Article does not limit the rights of either Contracting Party to withhold, suspend, revoke, limit or impose conditions on the operating authorization of an Airline or Airlines of the other Contracting Party in accordance with the provisions of Article 15 (Safety) and Article 16 (Aviation Security) of this Agreement.

### **CHAPTER III** **COMMERCIAL PROVISIONS**

#### **ARTICLE 5** **Tariffs**

1. Each Contracting Party shall allow prices for Air Services to be decided by each Designated Airline based on 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. Prices for International Air Service between the Territories of the Contracting Parties shall not be required to be filed. Neither Contracting Party shall require the notification or filing by a Designated Airline of the other Contracting Party of prices charged by sales agencies to the public, except as may be required on a non-discriminatory basis for information purposes. Notwithstanding the foregoing, the Designated Airlines of the Contracting Parties shall provide access, on request, to information on existing and proposed prices to the Aeronautical Authorities of the Contracting Parties in a manner and format acceptable to those Aeronautical Authorities for the purposes of this Article.
3. Except as otherwise provided in this Article, neither Contracting Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by a Designated Airline of either Contracting Party for International Air Service.



4. If a Contracting Party believes that a price proposed to be charged by a Designated Airline of the other Contracting Party for International Air Service is inconsistent with 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 cooperate 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 to the contrary, the previously existing price shall continue in effect.

## **ARTICLE 6**

### **Commercial Activities**

1. The Designated Airlines of each Contracting Party shall be allowed:
  - a. to establish in the Territory of the other Contracting Party, within the scope of the laws and regulations in force therein, offices for the promotion and sale of air transportation and ancillary or supplemental services (including the right to sell and to issue any ticket and/or air waybill, both its own tickets and/or air waybills and of any other Airline) as well as other facilities required for the provision of Air Service;
  - b. in the Territory of the other Contracting Party to engage directly and, at its discretion, through its agents, and/or other Airlines in the sale of Air Services and ancillary or supplemental services;
  - c. to sell such transportation and ancillary or supplemental services and any person shall be free to purchase such transportation or services in any freely convertible currency.
2. The Designated Airlines of each Contracting Party shall be allowed 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 Service and ancillary or supplemental services, in accordance with the entry, residence and employment laws and regulations of the other Contracting Party.
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.
4. Each Designated Airline shall have the right to perform its own ground-handling ("self-handling") in the Territory of the other Contracting Party, or, at its option, the right to select among competing suppliers that provide ground-handling services in whole or in part. Where the 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. Ground-handling activities shall be carried out in accordance with the laws and regulations of each Contracting Party, including, in the case of the Czech Republic, European Union law.

5. In operating or holding out the Air Services on the Specified Routes, each Designated Airline of a Contracting Party may enter into cooperative marketing arrangements under the following conditions:
- a. the cooperative marketing arrangements may include, but shall not be limited to blocked-space and code-sharing arrangements, with:
    - i. the Airline or Airlines of the same Contracting Party;
    - ii. the Airline or Airlines of the other Contracting Party, including domestic code share; and
    - iii. the Airline or Airlines of a third country. Should such a third country not authorize or allow comparable arrangements between the Airlines of the other Contracting Party and other Airlines on Air Services to, from and via the Territory of such third country, the Aeronautical Authorities of the concerned Contracting Party have the right not to accept such arrangements;
  - b. the operating Airlines involved in the co-operative marketing arrangements shall hold the underlying traffic rights including the route rights and the Capacity entitlements and meet the requirements normally applied to such arrangements;
  - c. all marketing Airlines involved in the co-operating arrangements shall hold the underlying route rights and meet the requirements normally applied to such arrangements;
  - d. the total Capacity operated within the Air Services performed under such arrangements shall be counted only against the Capacity entitlement of the Contracting Party designating the operating Airlines. The Capacity offered by the marketing Airlines on such services shall not be counted against the Capacity entitlement of the Contracting Party designating that Airline;
  - e. when holding out services for sale under such arrangements, the Airline concerned or its agent shall make it clear to the purchaser at the point of sale as to which Airline shall be the operating Airline on each sector of the service and with which Airlines the purchaser is entering into a contractual relationship;
  - f. these provisions shall be applicable to passenger, combination and all-cargo services.
6. Notwithstanding any other provision of this Agreement, the Designated Airlines and indirect providers of Air Services of either of the Contracting Parties shall be permitted, without restriction, to employ in connection with International Air Services any surface transportation for passengers, baggage, cargo and mail to or from any points in the Territory of either of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo and mail in bond under





applicable laws and regulations. Such passengers, baggage, cargo and mail, whether moving by surface or by air, shall have access to airport customs processing and facilities. The Designated Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other Airlines and indirect providers of air cargo transportation. Such intermodal services may be offered at a single through price for the air and surface transportation combined, provided that passengers and shippers are not misled as to the facts concerning such transportation.

## **ARTICLE 7**

### **Change of Aircraft**

1. On any segment or segments of the Specified Routes, a Designated Airline may perform International Air Services without any limitation as to change at any point on the Specified Route, in type or number of aircraft operated, provided that in the outbound direction the transportation beyond such point is a continuation of the transportation from the Territory of the Contracting Party that has designated the Airline and, in the inbound direction, the transportation to the Territory of the Contracting Party that has designated the Airline is a continuation of the transportation from beyond such point.
2. For the purpose of Change of Aircraft operations, a Designated Airline of one Contracting Party may use its own equipment and, subject to laws and regulations in force in the Territory of the other Contracting Party, leased equipment for operation under cooperative marketing arrangements with other Airlines.
3. A Designated Airline may use different or identical flight numbers for the sectors of its Change of Aircraft operations.

## **ARTICLE 8**

### **Fair Competition**

Each Contracting Party shall, where necessary, take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the Designated Airline or Airlines of the other Contracting Party.



**CHAPTER IV**  
**FINANCIAL PROVISIONS**

**ARTICLE 9**

**Taxes, customs duties and charges**

1. Aircraft operating on International Air Services by the Designated Airlines of either Contracting Party, as well as their regular equipment, spare parts, supplies of fuels and lubricants, Stores as well as advertising and promotional material kept on board such aircraft shall, on the basis of reciprocity, be exempt from all indirect taxes, customs duties, inspection fees and similar national or local duties and charges, on arrival in the Territory of the Contracting Party, provided such equipment and supplies remain on board the aircraft up to such time as they are re-exported.
2. With regard to regular airborne equipment, spare parts, supplies of fuels and lubricants and Stores introduced into the Territory of one Contracting Party by or on behalf of a Designated Airline of the other Contracting Party or taken on board the aircraft operated by such Designated Airline and intended solely for use on board that aircraft while operating International Air Services, no duties and charges, including customs duties and inspection fees imposed in the Territory of the first Contracting Party, shall be applied, even when these supplies are to be used on the parts of the journey performed over the Territory of the Contracting Party in which they are taken on board. The items referred to in this paragraph may be required to be kept under customs supervision and control.
3. Regular airborne equipment, spare parts, supplies of fuels and lubricants and Stores 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 the customs authorities of that Contracting Party, who may require that these materials be placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.
4. Baggage, cargo and mail in transit shall be exempt from customs duties and other charges.
5. The exemptions provided by this Article shall also be available where a Designated Airlines of one Contracting Party has contracted with another Airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the Territory of the other Contracting Party of the items specified in paragraphs 1, 2 and 3 of this Article.
6. Nothing in this Agreement shall prevent the Czech Republic from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its Territory for use in an aircraft of a Designated Airline of the Republic of Kenya that operates between a point in the Territory of the Czech Republic and another point in the Territory of the Czech Republic or in the Territory of another European Union Member State.





7. Nothing in this Agreement shall prevent the Republic of Kenya from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its Territory for use in an aircraft of a Designated Airline of the Czech Republic that operates between a point in the Territory of the Republic of Kenya and another point in the Territory of the Republic of Kenya.

#### **ARTICLE 10**

##### **User charges**

1. User Charges that may be imposed and/or controlled by the competent charging authorities or bodies of each Contracting Party on the Airlines of the other Contracting Party shall be just, reasonable, not discriminatory and equitably appointed among categories of users. In any event, any such User Charges shall be assessed on the Airlines of the other Contracting Party on terms not less favourable than the most favourable terms available to any other Airline at the time the charges are assessed.
2. User Charges imposed on the Designated Airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.
3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its Territory and the Airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the Airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Contracting Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for charges to enable users to express their views before changes are made.
4. Neither Contracting Party shall be held to be in breach of a provision of this Article, unless it fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable period; or following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

#### **ARTICLE 11**

##### **Double taxation**

Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of such agreement shall prevail.



**ARTICLE 12**  
**Transfer of Funds**

1. The Designated Airlines of the Contracting Parties shall have the right to convert and to transfer to their home Territory the excess of receipts over local expenditures earned in the Territory of the other Contracting Party in a freely convertible currency. Conversion and transfer shall be performed without restrictions at the foreign exchange market rate applicable for these transactions on the day the transfer is made. In the case that the foreign exchange market rate system is not established, the conversion and transfer shall be performed without restrictions on the basis of the official exchange rate applicable on the date the transfer is made. Actual transfer shall be executed without delay and shall not be subject to any charges except normal service charges collected by banks for such transactions.
2. In the event that payments between the Contracting Parties are governed by a special agreement, such an agreement shall apply.

**CHAPTER V**  
**REGULATORY PROVISIONS**

**ARTICLE 13**  
**Application of Laws, Regulations and Procedures**

1. The laws, regulations and procedures of either Contracting Party relating to the entrance, while within, or departure from its Territory of aircraft engaged in International Air Services, or to the operation and navigation of such aircraft, shall be complied with by the Designated Airlines of the other Contracting Party upon their entrance into, and until and including their departure from, the said Territory.
2. The laws, regulations and procedures of either Contracting Party relating to entry into, stay in, transit through, or departure from its Territory of passengers, crews, baggage and cargo including mail, such as laws, regulations and procedures relating to immigration, passports, or other approved travel documents, entry, exit, clearance, customs, quarantine, health, veterinary or sanitary measures shall be complied with, by crews or passengers and/or on behalf of cargo and mail carried by aircraft of the Designated Airlines of the other Contracting Party upon their entrance into, and until and including their departure from the Territory of the said Contracting Party.
3. Passengers, baggage, cargo and mail in direct transit across the Territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall be subject to no more than a simplified control, except checks justified on the basis of security provisions referred to in Article 16 of this Agreement, by the interest in maintaining of internal security and prevention of



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trafficking of narcotics and psychotropic substances, as well as prevention of illegal immigration.

4. Neither of the Contracting Parties shall give preference to any other Airline over the Designated Airlines of the other Contracting Party in the application of its customs, immigration, quarantine, and similar regulations; or in the use of airports, airways and air traffic services and associated facilities under its control.

#### **ARTICLE 14**

##### **Recognition of Certificates and Licences**

1. Certificates of airworthiness, certificates of competency and licences issued, or validated in accordance with the laws and regulations of one Contracting Party, including in the case of the Czech Republic, European Union Law, and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the Agreed Services, provided always that such certificates or licences were issued or validated, equal or above the minimum standards established under the Convention.
2. Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its Territory, certificates of competency and licences granted or validated for its own nationals by the other Contracting Party.

#### **ARTICLE 15**

##### **Safety**

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to air crew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days from the date of receipt of that request.
2. Where the Czech Republic has designated an Airline whose regulatory control is exercised and maintained by another European Union Member State, the rights of the other Contracting Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other European Union Member States and in respect of the operating authorization of that Airline.
3. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements 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 (Revocation and Suspension of Authorization) of this Agreement.

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4. Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any aircraft operated by or, under a lease arrangement, on behalf of the Airline or Airlines of one Contracting Party on services to or from the Territory of the other Contracting 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 conditions of the aircraft and its equipment (ramp inspections), provided this does not lead to unreasonable delay.

5. 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 purpose of Article 33 of the Convention, be free to conclude that the requirements under which the certificates or licences 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.

6. 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 4 of this Article 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 5 of this Article arise and to draw the conclusions referred to in that paragraph.

7. 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, a series of ramp inspections, a denial of access for ramp inspection, consultations or otherwise, that immediate action is essential to the safety of the Airline's operation.

8. Any action by one Contracting Party in accordance with paragraphs 3 or 7 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.





**ARTICLE 16**  
**Aviation Security**

1. The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their mutual obligations to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the 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, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, as well as any other Convention or Protocol on Aviation Security which becomes binding upon the Contracting Parties.
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, the 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 Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft which have their principal place of business or permanent residence in the Territories of the Contracting Parties or, in the case of the Czech Republic operators of aircraft which are established in its Territory under the EU Treaties and have valid Operating Licences in accordance with European Union law, and the operators of airports in their Territories act in conformity with such aviation security provisions. Each Contracting Party agrees that its operators of aircraft shall be required to observe for entry into, departure from or while within the Territory of the other Contracting Party, aviation security provisions in conformity with the law in force in that Contracting Party, including, in the case of the Czech Republic, European Union Law.
4. 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 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 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, 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.

6. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the Aeronautical Authorities of first Contracting Party may request consultations. Such consultations shall start within fifteen (15) days from the date of receipt of such a request from either Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, limiting, suspending or imposing conditions on the authorizations of the Airline or Airlines designated by the other Contracting Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Contracting Party may take interim action at any time. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with security provisions of this Article.

## **CHAPTER VI** **PROCEDURAL PROVISIONS**

### **ARTICLE 17** **Timetable**

1. The flight schedules of the Designated Airline or Airlines of one Contracting Party may be requested for approval by the Aeronautical Authorities of the other Contracting Party for operational purposes only.
2. In that case, the flight schedules shall be communicated at least thirty (30) days prior to the beginning of the operations and shall specify in particular the timetables, frequency of services, types of aircraft, configurations and numbers of seats to be made available to the public. In some cases, this period of thirty (30) days may be reduced subject to an agreement between the Aeronautical Authorities of both Contracting Parties. Both Contracting Parties shall minimize the administrative burdens of filing.
3. Any change to the approved flight schedules of a Designated Airline of one Contracting Party shall be submitted for approval to the Aeronautical Authorities of the other Contracting Party.

### **ARTICLE 18** **Consultations and Amendments**

1. In a spirit of close cooperation the Aeronautical Authorities of the Contracting Parties may consult each other from time to time with a view to ensuring the





implementation of, and satisfactory compliance with, the provisions of this Agreement.

2. Either Contracting Party may request consultations with a view to amend this Agreement and/or its Annex. These consultations shall begin within sixty (60) days from the date of the receipt of the request by the other Contracting Party, unless otherwise agreed. Such consultations may be conducted through discussion or by correspondence.
3. Any Amendment to this Agreement shall be agreed upon by the Contracting Parties and shall enter into force in accordance with the provisions of Article 23 (Entry into Force) of this Agreement.

#### **ARTICLE 19** **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 in the first place endeavour to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, 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 by such a tribunal 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, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case.
4. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Contracting Parties, a meeting will be convened to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than thirty (30) days after the tribunal is fully constituted.



5. The arbitration tribunal shall reach its decision by a majority of votes. The Contracting Parties shall comply with the decision.
6. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President of the arbitral tribunal.
7. Either Contracting Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party or to the Designated Airline or Airlines of either Contracting Party in default hereof.

## **CHAPTER VII**

### **FINAL PROVISIONS**

#### **ARTICLE 20**

##### **Duration and Termination**

1. Either Contracting Party may, at any time, give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement.
2. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this 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 between the Contracting Parties before the expiry of this period. In the absence of acknowledgement of receipt of the notice of termination by the other Contracting Party, such notice shall be deemed to have been received fourteen (14) days after the receipt of that notice by the International Civil Aviation Organization.

#### **ARTICLE 21**

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

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

#### **ARTICLE 22**

##### **Applicability of Multilateral Agreements and Conventions**

1. If a multilateral agreement or convention concerning any matter covered by this Agreement, enters into force in respect of both Contracting Parties, the relevant provisions of that multilateral agreement or convention shall prevail over the relevant provisions of this Agreement.



2. Consultations according to Article 18 (Consultations and Amendments) of this Agreement may be held with a view to determining the extent to which this Agreement is affected by the provisions of the relevant multilateral agreement or convention. The Contracting Parties may agree upon required amendments to this Agreement.

### **ARTICLE 23** **Entry into Force**

1. This Agreement shall enter into force on the first day of the third month following the date of receipt of the last written notification through diplomatic channels by which the Contracting Parties have informed each other that the formalities and constitutional requirements for entry into force of this Agreement in their respective countries have been complied with.
2. The Air Services Agreement between the Government of Czechoslovak Socialist Republic and the Government of the Republic of Kenya, signed on 3 March 1989 in Nairobi, shall be terminated and replaced in the relations between the Czech Republic and the Republic of Kenya on the day of entry into force of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE in [...] on this [...] day of [...] in two original copies in the Czech and English languages, all texts being equally authentic.

For the Czech Republic

For the Republic of Kenya

.....

.....







## **Annex Route Schedule**

### Section I

#### For the Designated Airlines of the Czech Republic:

Any points in the Czech Republic - any intermediate points - any points in Kenya - any beyond points v.v.

### Section II

#### For the Designated Airlines of the Republic of Kenya:

Any points in Kenya - any intermediate points - any points in the Czech Republic - any beyond points v.v.

### Notes

1. The Designated Airlines of each Contracting Party may on any or all flights omit calling at any of the intermediate and/or beyond points mentioned above, provided that the Agreed Services on the routes begin or end in the Territory of the Contracting Party which has designated the Airlines.
2. The exercise of the fifth freedom traffic rights on specified intermediate and/or beyond points shall be subject to agreement between the Aeronautical Authorities of both Contracting Parties.



**AIR SERVICES AGREEMENT  
BETWEEN  
THE REPUBLIC OF CYPRUS  
AND  
THE  
REPUBLIC OF KENYA**

ly

MR



## **PREAMBLE**

The Republic of Cyprus and the Republic of Kenya hereinafter referred to as the Contracting Parties.

Being Contracting Parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944.

Desiring to contribute to the progress of international civil aviation;

Desiring to guarantee the highest level of safety and security in international air transport;

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

Have agreed as follows:

A handwritten signature, possibly of a representative from the Republic of Cyprus, consisting of a stylized 'C' followed by a horizontal line.A handwritten signature, possibly of a representative from the Republic of Kenya, consisting of several overlapping, sweeping strokes.





## **CHAPTER I INTRODUCTION**

### **ARTICLE 1: Definitions**

1. For the purpose of this Agreement, and the Annex thereto the following terms have the following meaning, unless otherwise stated in the text:
  - a. the term "Aeronautical Authorities" means: for Republic of Cyprus, the Ministry of Transport, Communication and Works; for the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation; or, in either case, any person or body authorized to perform any functions at present exercised by the said Authorities or similar functions;
  - b. the terms "agreed service on a Specified Route" means scheduled air services on the Route specified in the Annex to this Agreement for the transport of passengers, cargo and mail, separately or in combination.;
  - c. the term "Agreement" means this Agreement, its Annex as well as any amendment to the Agreement or to its Annex;
  - d. the terms "Air Service", "International Air Service", "Airline" "Territory", "stop for non-traffic purposes" shall have, in the application of this Agreement the meaning specified in Articles 2 and 96 of the Convention;
  - e. the term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes any Annex adopted under Article 90 of the Convention and any amendment of the Annexes or the Convention under Articles 90 and 94 thereof, insofar as those Annexes and amendments have become effective for, or been ratified by both Contracting Parties;
  - f. the term "Designated Airline" means the Airline which has been designated and authorized in accordance with Article 3 (Designation and Authorization) of this Agreement;
  - g. The term "tariff" means the price to be charged for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services performed by the carrier in connection with the air transportation but excluding remuneration and conditions for the carriage of mail.;
  - h. the term "User Charge" means a charge imposed on Airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities;
  - i. The term "capacity" in relation to an aircraft means, the payload of that aircraft available on a route or section of a route and the term "capacity" in relation to "an agreed service" means, the capacity of the aircraft used on such service,

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multiplied by the frequency operated by such aircraft over a given period and a route or section of a route.;

- j. the term "European Union Member state" means a state that is now or in the future a Party to the Treaty on the European Union and the Treaty on the functioning of the European Union;
- k. References in this Agreement to nationals of Republic of Cyprus shall be understood as referring to nationals of European Union Member or the European Free Trade Association.
- l. References in this Agreement to the "EU Treaties" shall be understood as referring to the Treaty on European Union and the Treaty on the Functioning of the European Union.

## **CHAPTER II OBJECTIVES**

### **ARTICLE 2: Grant of Rights**

- 1. Each Contracting Party grants to the other Contracting Party, except as otherwise specified in the Annex, the following rights for the conduct of International Air Services by the Designated Airline(s) of the other Contracting Party:
  - a. the right to fly across its Territory without landing;
  - b. the right to make stops in its Territory for non-commercial traffic purposes; and
  - c. while operating an Agreed Service on a Specified Route, the right to make stops in its Territory for the purposes of taking up and discharging international traffic in passengers, baggage, cargo and mail, separately or in combination.
- 2. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Contracting Party's Airline(s) to take on board, 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 the other Contracting Party. (cabotage).

### **ARTICLE 3: Designation and Authorization**

- 1. Either Contracting Party shall have the right to designate, by written notification through diplomatic channels to the other Contracting Party, three (3) airlines for the purpose of operating the agreed services on the specified routes, and to withdraw or alter such designations.
- 2. Upon receipt of such a notification, each Contracting Party shall, without delay, grant to the Airline(s) so designated by the other Contracting Party the

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appropriate operating authorizations subject to the provisions of this Article, and permissions with the minimum procedure delay, provided that:

- a. in the case of an Airline is designated by Republic of Cyprus:
    - i. the Airline is established in the Territory of Republic of Cyprus 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 European Union 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 an Airline is designated by the Republic of Kenya:
    - i. the Airline is established in the Territory of the Republic of Kenya and has a valid Operating Licence in accordance with applicable law of the Republic of Kenya; and
    - ii. effective regulatory control of the Airline is exercised and maintained and responsible for issuing its Air Operator's Certificate by the Republic of Kenya; and
    - iii. the Airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya,
  - c. the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services 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(s) 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. Either Contracting Party may revoke, withhold, suspend or limit the operating authorization or technical permissions of an airline designated by the other Contracting Party where:







- a. in the case an Airline is designated by Republic of Cyprus:
    - i. the Airline is not established in the Territory of Republic of Cyprus 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 European Union 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 an Airline is designated by the Republic of Kenya:
    - i. the Airline is not established in the Territory of the Republic of Kenya or has no valid operating licence in accordance with applicable law of the Republic of Kenya; or
    - ii. effective regulatory control of the Airline is not exercised or not maintained by the Republic of Kenya responsible for issuing its Air Operator's Certificate; or
    - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya,
  - c. in case the other Contracting Party is not maintaining and administering the provisions set forth in Article 7 (Fair Competition), Article 13 (Safety) and Article 14 (Security);
  - d. such airline is unable to prove that it is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied in conformity with the Convention to the operation of international air services by the Contracting Party receiving the designation; or
  - e. the airline fails to comply with the laws and/or regulations of the Contracting Party granting these rights; or
  - f. the airline otherwise fails to operate in accordance with the conditions prescribed under the present Agreement.
2. Unless immediate action is essential to prevent further non-compliance with the conditions as referred to in 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.
  3. This Article does not limit the rights of either Contracting Party to withhold, suspend, revoke, limit or impose conditions on the operating authorization of an



Airline or Airlines of the other Contracting Party in accordance with the provisions of Article 7 (Fair Competition), Article 13 (Safety) and Article 14 (Aviation Security) of this Agreement.

### **CHAPTER III COMMERCIAL PROVISIONS**

#### **ARTICLE 5 : Tariffs**

1. The tariffs in respect of international air services operated to/from/through the territory of either Contracting Party shall be established by the designated airlines at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit. The tariffs established under paragraph (1) above shall not be required to be filed by the designated airlines of one Contracting Party with the aeronautical authorities of the other Contracting Party. Notwithstanding this, each Contracting Party shall have the right to intervene so as to:
  - a) prevent unreasonably discriminatory prices or practices;
  - b) protect consumers from prices that are unduly high or restrictive due to the abuse of a dominant position; and
  - c) protect airlines from prices that are artificially low due to subsidy or support.
2. For the purposes set out in paragraph (1) this Article, the Aeronautical Authorities of one Contracting Party may require the designated airlines of the other Contracting Party to provide information relating to the establishment of the tariffs.
3. If one Contracting Party believes that the tariff charged by designated airlines of the other Contracting Party is inconsistent with the considerations set forth in this Article, it shall notify the other Contracting Party of the reason for its dissatisfaction as soon as possible and request consultations which shall be held not later than thirty (30) days after receipt of the request. If the Contracting Parties reach an agreement with respect to the tariff for which a notice of dissatisfaction has been given, each Contracting Party shall use its best efforts to put that agreement into effect. In the absence of such an agreement, the previously existing tariff shall continue to be in effect.
4. Notwithstanding the paragraphs above, the traffic to be charged by the designated airline of the Republic of Kenya for carriage wholly within the European Union shall be subject to the European Union Law.

#### **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 transportation and ancillary or supplemental





- services (including the right to sell and to issue any ticket and/or air waybill, both its own tickets and/or air waybills and of any other Airline) as well as other facilities required for the provision of air transportation;
- b. in the Territory of the other Contracting Party to engage directly and, at its discretion, through its agents, and/or other Airlines in the sale of Air Services and ancillary or supplemental services in case of nomination of a general agent or a general sales agent, this agent shall be appointed in accordance with the relevant applicable laws and regulations of each Contracting Party.;
  - c. to sell such transportation and ancillary or supplemental services and any person shall be free to purchase such transportation or services in any currency.
2. The Designated Airline(s) of each Contracting Party shall be allowed 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 transportation and ancillary or supplemental services, in accordance with the entry, residence and employment rules and regulations of the other Contracting Party.
  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 Party, authorized to perform such services in the Territory of that Party.
  4. Each Designated Airline shall have the right subject to the laws and regulations of each Contracting Party including, in the case of the Republic of Cyprus, European Union law, to perform its own ground-handling ("self-handling") in the Territory of the other Contracting Party, or, at its option, the right to select among competing suppliers that provide ground-handling services in whole or in part. This right may be subject only to restrictions justified by specific constraints of available space or capacity. 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. Ground-handling activities shall be carried out in accordance with the laws and regulations of each Contracting Party, including, in the case of the Republic of Cyprus, European Union law.
  5. In operating or holding out services under this Agreement, any air carrier of a Party may enter into cooperative marketing arrangements, such as blocked-space agreements or code-sharing arrangements, with:
    - (a) any air carrier or carriers of the Parties; and
    - (b) any air carrier or carriers of a third country; and
    - (c) any surface (land or maritime) transport provider;Provided that:
    - (i) the operating carrier holds the appropriate traffic rights; and





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- (ii) the marketing carriers hold the appropriate route rights within the relevant bilateral provisions; and
  - (iii) the arrangements meet the requirements relating to safety and competition normally applied to such arrangements.
- d. In respect of passenger transport sold involving code-shares, the purchaser shall be informed at the point of sale, or in any case at check-in, or on boarding where no check-in is required for a connecting flight, which transport providers will operate each sector of the service.
- e. the total Capacity operated by the Air Services performed under such arrangements shall be counted only against the Capacity entitlement of the Contracting Party designating the operating Airline(s). The Capacity offered by the marketing Airline(s) on such services shall not be counted against the Capacity entitlement of the Contracting Party designating that Airline;
- f. these provisions shall be applicable to passenger, combination and all-cargo services.
- g. the designated airlines are required to file for approval for any cooperative marketing arrangements are subject to the approval of the relevant Aeronautical Authorities of both Contracting parties at least 30-days before its proposed introduction.
- 6. Notwithstanding any other provision of this Agreement, the Designated Airline(s) and indirect providers of Air Services of either of the Contracting Parties shall be permitted, without restriction, to employ in connection with International Air Services any surface transportation for passengers, baggage, cargo and mail to or from any points in the Territory of either of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo and mail in bond under applicable laws and regulations. Such passengers, baggage, cargo and mail, whether moving by surface or by air, shall have access to airport customs processing and facilities. The Designated Airline(s) may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other Airlines and indirect providers of air cargo transportation. Such intermodal services may be offered at a single through price for the air and surface transportation combined, provided that passengers and shippers are not misled as to the facts concerning such transportation.
- 7. The activities mentioned in this Article shall be carried out in accordance with the laws and regulations of the Contracting Parties.





## **ARTICLE 7: Fair Competition**

1. Each Contracting Party shall allow a fair and equal opportunity for each Designated Airline to compete in providing the international air transportation governed 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 a Designated Airline of the other Contracting Party.
3. Each Contracting Party shall allow each Designated Airline to determine the frequency and Capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type(s) operated by the Designated Airline(s) 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.
4. Neither Party shall impose on the other Party's Designated Airline(s) an uplift ratio, no-objection fee, or any other requirement with respect to Capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

## **CHAPTER IV FINANCIAL PROVISIONS**

### **ARTICLE 8: Taxes, customs duties and charges**

1. Aircraft operated on international services by the designated airline(s) of either Contracting Party, as well as their regular equipment, supplies of fuel and lubricants, and 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 and supplies remain on board the aircraft up to such time as they are re-exported.
2. There shall also be exempt from the same duties and taxes, with the exception of charges corresponding to the service performed:
  - (a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the authorities of the said Contracting Party, and for use on board aircraft engaged in international services of the other Contracting Party;



- (b) spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airline(s) of the other Contracting Party;
- (c) fuel and lubricants destined to supply aircraft operated on international services by the designated airline(s) of the other Contracting Party, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) above may be required to be kept under customs supervision or control.

- 3. 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 the customs authorities of such Party. In such case, they 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.
- 4. Nothing in this Agreement shall prevent Republic of Cyprus from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its Territory for use in an aircraft of a Designated Airline of the Republic of Kenya that operates between a point in the Territory of the European part of the Republic of Cyprus and another point in the Territory of Republic of Cyprus or in the Territory of another European Union Member State.

#### **ARTICLE 9: User charges**

Each of the Contracting Parties may impose or permit to be imposed just and reasonable charges for the use of airports and other facilities under its control.

Each of the Contracting Parties agree, however, that such charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

#### **ARTICLE 10: Transfer of Funds**

Each Contracting Party shall grant, to the designated airline of the other Contracting Party, the right to transfer to its country on demand, in accordance with the foreign exchange regulations in force, the excess of receipts over expenditure achieved in connection with the carriage of passengers, cargo and mail on the agreed services in the territory of the other Contracting Party.







## **CHAPTER V REGULATORY PROVISIONS**

### **ARTICLE 11: Application of Laws, Regulations and Procedures**

1. The laws, regulations and procedures of either Contracting Party relating to the entrance, while within, or departure from its Territory of aircraft engaged in International Air Services, or to the operation and navigation of such aircraft, shall be complied with by the Designated Airline(s) of the other Contracting Party upon their entrance into, and until and including their departure from, the said Territory.
2. The laws, regulations and procedures of either Contracting Party relating to immigration, passports, or other approved travel documents, entry, clearance, customs and quarantine shall be complied with, by crews or passengers and/or on behalf of cargo and mail carried by aircraft of the Designated Airline(s) of the other Contracting Party upon their entrance into, and until and including their departure from the Territory of the said Contracting Party.
3. Passengers, baggage, cargo and mail in transit across the Territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures, be subject to no more than a simplified control.
4. Neither of the Contracting Parties shall give preference to any other Airline over the Designated Airline(s) of the other Contracting Party in the application of its customs, immigration, quarantine, and similar regulations; or in the use of airports, airways and air traffic services and associated facilities under its control.
5. Each Contracting Party shall, upon request of the other Contracting Party, supply copies of the relevant laws, regulations and procedures referred to in this Agreement.

### **ARTICLE 12: Recognition of Certificates and Licenses**

1. Certificates of airworthiness, certificates of competency and licenses issued, or validated in accordance with the laws and regulations of one Contracting Party, including for Republic of Cyprus in accordance with European Union laws and regulations, and unexpired shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services, provided always that such certificates or licences were issued or validated, equal or above the minimum standards established under the Chicago Convention.
2. Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its Territory, certificates of competency and licences granted or validated for its own nationals by the other Contracting Party.

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### **ARTICLE 13: Safety**

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to air crew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.
2. Where the Republic of Cyprus has designated an Airline whose regulatory control is exercised and maintained by another European Union Member State, the rights of the other Contracting Party under Article 4, 12 and 13 shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other European Union Member States and in respect of the operating authorization of that Airline.
3. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements 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 (Revocation and Suspension of Authorization) of this Agreement.
4. Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any Aircraft operated by or, under a lease arrangement, on behalf of the Airline or Airlines of one Contracting Party on services to or from the Territory of the other Contracting 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 conditions of the aircraft and its equipment (ramp inspections), provided this does not lead to unreasonable delay.
5. 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 purpose of Article 33 of the Convention, be free to conclude that the requirements under which the certificates 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

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that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

6. 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 of this Article 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 of this Article arise and to draw the conclusions referred to in that paragraph.
7. 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, a series of ramp inspections, a denial of access for ramp inspection, consultations or otherwise, that immediate action is essential to the safety of the Airline's operation.
8. Any action by one Contracting Party in accordance with paragraphs 3 or 7 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.
9. Each Contracting Party shall see to it that the Designated Airline(s) will be provided with communicative, aviation and meteorological facilities and any other Services necessary for the safe operations of the Agreed Services.

#### **ARTICLE 14: Aviation Security**

1. The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their mutual obligations to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the 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, its supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, as well as any other Convention or Protocol on Aviation Security which becomes binding upon the Contracting Parties.
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, the 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 Chicago Convention; they shall require that operators of aircraft of their registry or operators of aircraft which have their principal place of business or permanent residence in their Territory of the Contracting Parties or, in the case of the Republic of Cyprus operators of aircraft which are established in its Territory under the European Union Treaties and have valid Operating Licenses in accordance with European Union law, and the operators of airports in their Territory act in conformity with such aviation security provisions. Each Contracting Party agrees that its operators of aircraft shall be required to observe for departure from or while within the Territory of the other Contracting Party, aviation security provisions in conformity with the law in force in that country, including, in the case of Republic of Cyprus, European Union Law.
4. 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 and aircraft Stores prior to and during boarding or loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Party for reasonable special security measures 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, 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.
6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the Territory of the other Contracting Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the Territory of the first Contracting Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.
7. When a Contracting Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Contracting Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, limiting, suspending or imposing conditions on the authorizations of the Airline or Airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party under paragraph 1 of Article 4 of this Agreement prior to the expiry of fifteen (15) days may take interim action at any time Any action taken in accordance with this paragraph shall be discontinued



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upon compliance by the other Contracting Party with the security provisions of this Article.

## **CHAPTER VI PROCEDURAL PROVISIONS**

### **ARTICLE 15: Timetable**

1. The designated airlines of each Contracting Party shall communicate for approval to the Aeronautical Authorities of the other Contracting Party not less than thirty days prior to the inauguration of services on the routes specified in accordance with Article 2 of the present Agreement, the types of aircraft to be used and the flight schedules.
2. The Aeronautical Authorities of either Contracting Party shall supply to the Aeronautical Authorities of the other Contracting Party, at their request, such information and statistics relating to the traffic carried on the agreed services by the designated airline of the first Contracting Party to and from the territory of the other Contracting Party as may normally be prepared and submitted by the designated airlines to their National Aeronautical Authorities. Any additional statistical traffic data which the Aeronautical Authorities of one Contracting Party may desire from the Aeronautical Authorities of the other Contracting Party shall, upon request, be a subject of mutual discussion and agreement between the two Contracting Parties.

### **ARTICLE 16: Consultation and Amendment**

1. In a spirit of close cooperation the Aeronautical Authorities of the Contracting Parties may consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement.
2. Either Contracting Party may request consultations with a view to amend this Agreement and/or its Annex. These consultations shall begin within sixty (60) days from the date of the receipt of the request by the other Contracting Party, unless otherwise agreed. Such consultations may be conducted through discussion or by correspondence between the Aeronautical Authorities of the Contracting Parties.
3. Any Amendment to this Agreement shall be agreed upon by the Contracting Parties and shall be effected through an exchange of diplomatic notes. Such Amendment shall enter into force in accordance with the provisions of Article 24 (Entry into Force) of this Agreement.
4. Notwithstanding the provisions of paragraph 3 in this Article, any amendment of the Annex to this Agreement may be agreed upon by the Aeronautical Authorities of the Contracting Parties, and confirmed through an exchange of diplomatic notes, and shall enter into force on a date to be determined in the diplomatic notes.



## **ARTICLE 20: 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 in the first place endeavor to settle their dispute by bilateral negotiations.
2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed upon within the period indicated, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators. If the President is a national of the same country as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
3. Except as otherwise agreed, the arbitration tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than fifteen (15) days after the tribunal is fully constituted.
4. Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days of the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within fifteen (15) days after replies are due.
5. The tribunal shall attempt to render a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.
6. The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.
7. The decision of the tribunal shall be binding on the Contracting Parties.
8. The expenses of the tribunal shall be shared equally between the Contracting Parties.



9. If and so long as either Contracting Party fails to comply with any decision given under paragraph 3 of this Article, the other 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 the Designated Airline or Airlines in default.

#### **ARTICLE 18: Environment**

1. The Parties support the need to protect the environment by promoting the sustainable development of aviation.
2. The Parties recognize the need to take appropriate measures to prevent or otherwise address the environmental impact of air transport provided that such measures are fully consistent with their rights and obligations under international law.
3. The Parties recognize the importance of working together and with the global community, to consider and minimize the effects of aviation on the environment.
4. The Parties recognize the importance of tackling climate change and therefore of addressing greenhouse gas (GHG) emissions associated with aviation, both at domestic and international levels. They agree to step up cooperation on these matters, including through relevant multilateral arrangements, particularly the use of the Sustainable Development Mechanism established by Article 6 of the Paris Agreement under the United Nations Framework Convention on Climate Change in the development of international global market based measures such as the Carbon Offsetting and Reduction Scheme (CORSIA) for international aviation currently under development by ICAO, to address GHG emissions in the aviation sector and any other aspect under the said Article 6 of particular relevance for international aviation emissions.

#### **CHAPTER VII FINAL PROVISIONS**

##### **ARTICLE 19: Termination**

1. Either Contracting Party may, at any time, give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement.
2. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case this 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 between the Contracting Parties before the expiry of this period. In the absence of acknowledgement of receipt of the notice of termination by the other Contracting





Party, such notice shall be deemed to have been received fourteen (14) days after the receipt of that notice by the International Civil Aviation Organization.

#### **ARTICLE 20: Registration with the International Civil Aviation Organization**

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

#### **ARTICLE 21: Applicability of Multilateral Agreements and Conventions**

1. The provisions of the Convention shall be applicable to this Agreement.
2. If a multilateral agreement or convention, accepted by both Contracting Parties, concerning any matter covered by this Agreement, enters into force, the relevant provisions of that multilateral agreement or convention shall supersede the relevant provisions of this Agreement.
3. The Contracting Parties may consult each other to determine the consequences for this Agreement of the supersession, as mentioned under paragraph 2 of this Article and to agree upon required amendments to this Agreement.

#### **ARTICLE 22: Entry into Force**

This Agreement shall enter into force on the first day of the month following the date of receipt of the last written notification through diplomatic channels by which the Contracting Parties have informed each other that the formalities, constitutional requirements and all its internal procedures for its entry into force in their respective countries have been complied with.

From the date of entry into force of this Agreement, the Air Services Agreement between the Government of the Republic of Cyprus and the the Republic of Kenya, signed in Nicosia 09<sup>th</sup> of June 1993, with all supplements, annexes and amendments thereto is terminated in regard to relations between the Republic of Cyprus and the Republic of Kenya.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.





DONE in ..... on this ..... day of ..... in two original copies in the Greek and English Languages, all texts being equally authentic.

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For the Republic of Cyprus

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For the Republic of Kenya

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## **ANNEX**

### **ROUTE SCHEDULE**

#### **SCHEDULED AIR SERVICES**

##### **SCHEDULE I**

Route to be operated by the designated airlines of the Republic of Cyprus:

Points of Departure	Intermediate Points	Points of Destination	Beyond Points
Larnaka and/or Pafos	Any Points	Mombasa and/or Nairobi	Any Points

##### **SCHEDULE II**

Route to be operated by the designated airlines of the Republic of Kenya:

Points of Departure	Intermediate Points	Points of Destination	Beyond Points
Nairobi and/or Mombasa	Any Points	Larnaka and/or Pafos	Any Points

##### **Notes:**

1. Without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that any service either begins or terminates in the Territory of the country designating the Airline(s).
2. The designated airlines of each Contracting Party may select any intermediate and/or beyond points at its own choice and may change its selection in the next season on condition that no traffic rights are exercised between those points and the territory of the other party
3. Each Designated Airline may on any or all flights and at its option:
  - a. operate flights in either or both directions;
  - b. terminate any or all of their services in the Territory of the other Contracting Party;
  - c. combine different flight numbers within one aircraft operation;
  - d. serve intermediate and beyond points and points in the territories of the Contracting Parties in any combination and in any order;



- e. serve points behind any point in its Territory with or without Change of Aircraft or flight number and hold out and advertise such services to the public as through services; and
  - f. combine traffic on the same aircraft regardless of where such traffic originate.
4. The right of the designated airline of one Contracting Party to operate flights for the carriage of passengers, baggage, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of third countries (5th freedom traffic rights) will be subject to approval between the Aeronautical Authorities of both Parties, and may be agreed upon in an arrangement.





**AIR TRANSPORT AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF CHILE**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF KENYA**





The Government of the Republic of Chile and the Government of the Republic of Kenya, hereinafter referred to as "the Parties";

Desiring to promote an air transportation system based on competition among airlines in the marketplace, with minimum government interference and regulation, and equal opportunities;

Desiring to facilitate the expansion of international air transportation;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options at the lowest prices that are not discriminatory and do not represent abuse of a dominant position, and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transportation and reaffirming their serious concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

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

Have agreed as follows:

## **ARTICLE 1**

### **Definitions**

For the purpose of this Agreement, unless otherwise stated, the term:

1. "Aeronautical authorities" means, in the case of the Republic of Chile, the Civil Aeronautical Board, or its successor agency or agencies; and in the case of the Republic of Kenya, the Cabinet Secretary responsible for civil aviation, or its successor agency or agencies;
2. "Agreement" means this Agreement as well as any amendment thereto;
3. "Party" is a State that has formally agreed to be bound to this Agreement;





4. "Air transportation" means any public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration, hire, or otherwise;
5. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:
  - a. any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by both Parties, and
  - b. any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for both Parties;
6. "ICAO" designates the International Civil Aviation Organization;
7. "Designated airline" means the airline or airlines designated and authorized in accordance with Article 3 of this Agreement;
8. "Price" means any tariff, fare, rate, or charge for the carriage of passengers, baggage, and cargo and the conditions under which this tariff, fare, rate, or charge applies, excluding remuneration and other conditions relating to carriage of mail;
9. "International air service" means, under Article 96 of the Convention, air transportation that passes through the airspace over the territory of more than one State;
10. "Territory" has the meaning assigned to it in Article 2 of the Convention;
11. "User charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation security goods, facilities, and services; and
12. "Code sharing" means a business arrangement among designated airlines of both Parties and/or third country airlines under which they jointly operate a specific route for carrying passengers, cargo, and mail, one as operator and marketer and the other as marketer, whereby each of the airlines involved has traffic rights.





## ARTICLE 2

### Grant of Rights

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services by a designated airline or airlines (hereinafter called "agreed services").

Subject to the provisions of this Agreement the designated airline(s) of each Party shall enjoy the following rights:

- (a) right to fly without landing across the territory of the other Party;
  - (b) right to make stops in the territory of the other Party for non-traffic purposes;
  - (c) right to provide air services between points in both territories;
  - (d) right to provide air services from points behind the territory of the Party designating the airline via that Party and intermediate points to any point or points in the territory of the other Party and beyond; andwithout limitations regarding routes, frequencies, and any type of aircraft.
2. The designated airlines of one Party shall have the right to use all airways, airports, and other related facilities in the territory of the other Party on a non-discriminatory basis.
3. Each designated airline may, on any or all flights and at its option:
  - a. operate flights in either or both directions;
  - b. combine different flight numbers within one aircraft operation;
  - c. serve behind, intermediate, beyond points, and points in the territories of the Parties on the routes in any combination and in any order;
  - d. omit stops at any point or points;
  - e. transfer traffic from any of its aircraft to any other of its aircraft at any point on the routes, whether it is the traffic of passengers, cargo, and mail, or exclusively the traffic of cargo from one aircraft to another or to several aircraft other than those used over the same route before the







stop, whether these are its own aircraft or operated under any of the modalities specified in Article 8; and

- f. serve points behind any point in its territory, with or without change of aircraft or flight number, and may hold out and advertise such services to the public as direct services.
4. The airlines of each Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraph (2) (a) and (b) of this Article.
5. Nothing in paragraph (2) of this Article shall be deemed to confer on the designated airline(s) of one Party the right of taking on, in the territory of the other Party, passengers, baggage and cargo including mail carried for remuneration or hire and destined for another point in the territory of that other Party.

### **ARTICLE 3**

#### **Designation and Authorization**

1. Each Party shall have the right to designate as many airlines as it wishes to conduct air transportation in accordance with this Agreement, and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels.
2. On receipt of such a designation, and of applications from the designated airline(s), the aeronautical authorities of the other Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, grant appropriate authorizations and permissions with minimum procedural delay, according to paragraph 1 of this Article.
3. The aeronautical authorities of a Party may require the airline designated by the other Party to demonstrate that it is qualified to meet the conditions set forth by the laws and regulations as normally and reasonably applied to the operation of air transportation.
4. Each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:





- a) the airline is incorporated and has its Principal place of business in the territory of the Party designating the airline;
  - b) the Party designating the airline is in compliance with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and
  - c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.
5. When an airline has been so designated and authorized, it may commence operation of the agreed services in accordance with the relevant provisions of this Agreement and with minimum procedural delay.



#### **ARTICLE 4**

##### **Revocation, Suspension or Limitation of Authorization**

1. Each Party shall reserve the right to revoke, suspend, or limit the operating authorizations granted to an airline designated by the other Party, provided that the airline is not incorporated and/or does not have its principal place of business in the territory of the other Party, or has failed to comply with the laws and regulations referred to in Article 5 (Applications of Laws) of this Agreement. Such a right established by this Article shall be exercised only after consultation with the other Party.
2. This Article does not limit the rights of either Party to suspend, limit, or impose conditions on air transportation in accordance with the provisions of Articles 6 (Safety) and 7 (Aviation Security).

#### **ARTICLE 5**

##### **Application of Laws and Regulations**

1. The laws and regulations of one Party governing entry into, stay in, or departure from its territory of aircraft engaged in international air services or to the operation and navigation of such aircraft while within the said territory shall apply to the designated airline(s) of the other Party.
  2. The laws and regulations of one Party governing entry to, stay in or departure from its territory of passengers, crew, cargo or mail, such as
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formalities regarding entry, exit, emigration and immigration, customs, health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline(s) of the other Party, while they are within the said territory.

3. Passengers, baggage and cargo in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures against acts of violence, smuggling of narcotics and air piracy, be subject to no more than a simplified control.
4. Neither Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air services in the application of its immigration, customs, quarantine and similar regulations.

## ARTICLE 6

### Safety

1. Each Party may request consultations at any time concerning safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of the designated airlines. Such consultations shall take place within thirty (30) days of that request.
2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas mentioned in paragraph 1 that meet the standards established at that time pursuant to the Convention, the other Party shall be informed of such findings and of the steps considered necessary to conform with those standards. The other Party shall then take appropriate corrective action within an agreed time period.
3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of the other Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided that this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this search is to verify the





validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the standards established at that time pursuant to the Convention.

4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.
5. Any action by one Party in accordance with paragraph 4 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.
6. With reference to paragraph 2 above, if it is determined that a Party remains in non-compliance with the standards established at that time pursuant to the Convention when the agreed time period has lapsed, the Secretary General of the International Civil Aviation Organization should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.
7. Where one Party has designated an airline whose regulatory control is exercised and maintained by a third State, the rights of the other Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that third State and in respect of the operating authorization of that airline.

## **ARTICLE 7**

### **Recognition of Certificates and Licences**

1. Each Party shall recognize as valid, for the purpose of operating the agreed services provided for in the present Agreement, certificates of airworthiness, certificates of competency, and licences issued or validated by the other Party and still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flights above or landing within its own Territory, certificates of competency and licences granted to or validated for its own nationals by the other Party or by a third country.
2. The designated airlines of one Party shall comply with the technical standards of the other Party regarding revalidation and granting of the Air







Operator Certificate for foreign operators the requirements of which shall not be discriminatory compared with national companies or other international companies.

## ARTICLE 8

### Aviation Security

1. In accordance with their rights and obligations under International Law, the Parties reaffirm their mutual obligation to protect the security of civil aviation against acts of unlawful interference as an integral part of this Agreement.
2. Each Party shall, at the request of the other Party, provide all necessary assistance to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of their passengers, crew, aircraft, airports, and air navigation facilities, and to address any other threat to the security of civil air navigation.
3. Without limiting the generality of their rights and obligations under international law, the Parties shall act in conformity with the provisions of the Convention on Offenses and other Certain Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970, and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence in Airports serving International Civil Aviation, signed at Montreal on February 24, 1988, provided both Parties are parties to said Conventions, as well as any other Convention or Protocol regarding civil aviation security ratified by both Parties.
4. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions set by the International Civil Aviation Organization and designated as Annexes to the Convention on International Civil Aviation, insofar as such provisions are applicable to the Parties. They shall require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory and operators of airports in their territory act in conformity with such aviation security provisions.





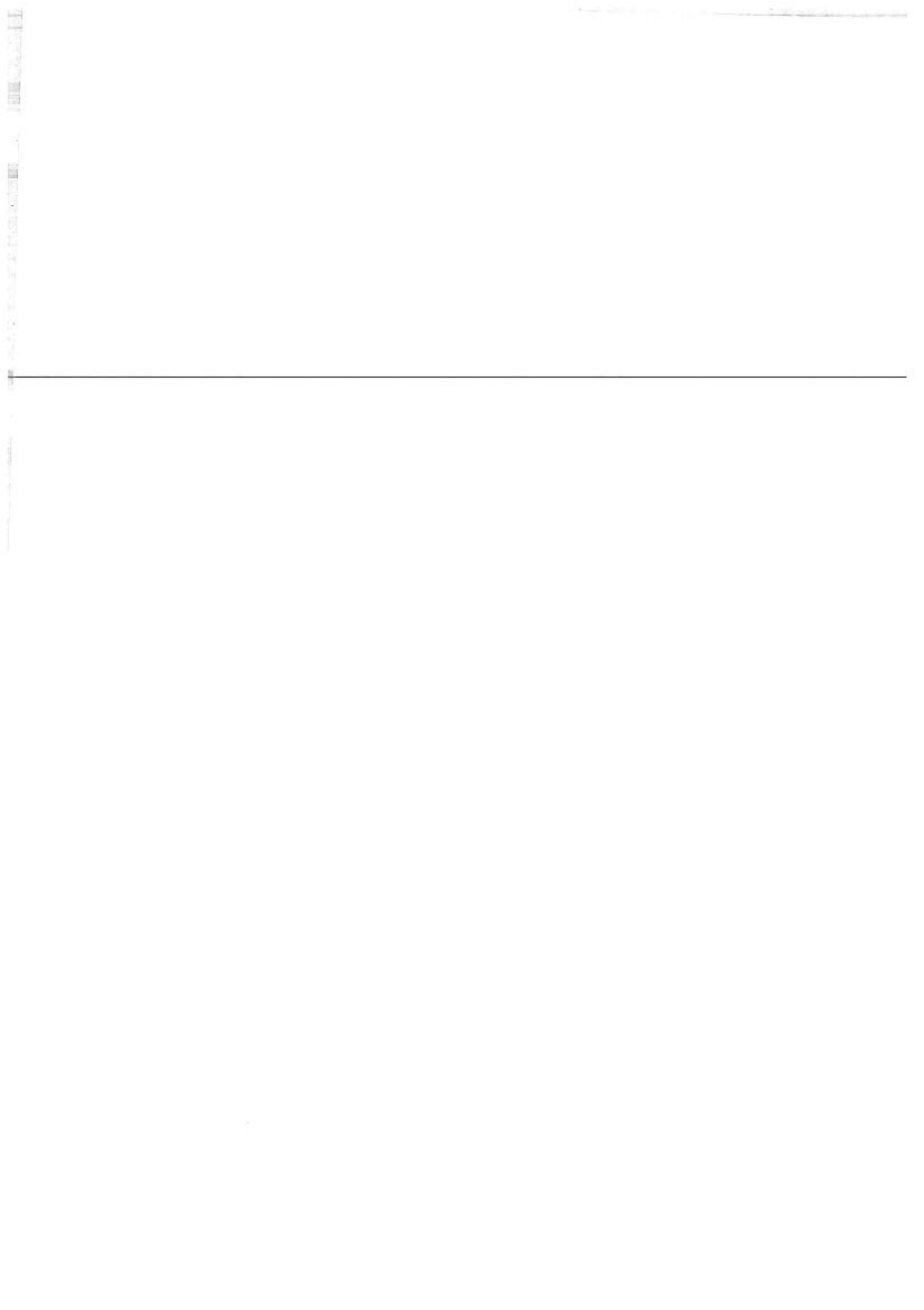


5. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions required by the other Party for entry into, departure from, and while within the territory of the other Party. Each Party shall ensure that adequate measures are applied within its territory to protect aircraft and inspect passengers, crew, carry-on items, cargo, and aircraft stores, prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for special aviation security measures to meet a particular threat.
6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports, or air navigation facilities occurs, the Parties shall assist one other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.
7. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement on the issues involved within 15 days from the date of such request shall constitute grounds to withhold, revoke, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

## ARTICLE 9

### Commercial Opportunities

1. The designated airlines of each Party shall have the right to establish offices in the territory of the other Party for the promotion and sale of air transportation.
  2. The designated airlines of each Party shall be entitled, in accordance with the laws and regulations of the other Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Party managerial, sales, technical, operation, and other specialized staff required for the provision of air transport.
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3. Each designated airline shall have the right to perform its own ground-handling services in the Territory of the other Party (hereinafter "self-handling services") or, at its option, select among competing agents for ground handling services in the territory of the other Party. These services shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling services, ground handling services shall be available on equal basis to all Airlines; charges shall be based on costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.
4. Designated airlines of either Party may engage in the sale of air transportation in the territory of the other Party directly and, at the airline's discretion through its agents. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies, subject to the current rate of exchange provisions of each Party.
5. Each designated airline shall have the right to remit to its principal place of business local revenues obtained in the territory of the former Party in excess of sums locally disbursed. Such transfers shall be effected on the basis of the foreign exchange regulations in force. If payments between the Parties are regulated by a special agreement, this special agreement shall apply.
6. In operating or holding out the agreed services, the designated airline of each Party shall be permitted to enter into cooperative marketing arrangements such as blocked-space or code-sharing arrangements, with:
  - (a) an airline or airlines of the same Party;
  - (b) an airline or airlines of the other Party;
  - (c) an airline or airlines of a third country; and

provided that,

- i) all airlines in such arrangements hold the appropriate authority to operate on the routes and segments concerned; and
- ii) in respect of any tickets sold, the airline makes it clear to





the purchaser at the point of sale which airline will actually operate each sector of the service and with which airline or airlines the purchaser is entering into a contractual relationship.

7. Where a designated airline operates the agreed services under code-sharing arrangements as the operating airline, the operated capacity shall be counted against the capacity entitlements of the Party designating the said airline. Capacity offered by a designated airline acting as the marketing airline on the code-share services operated by other airlines shall not be counted against the capacity entitlements of the Party designating the said marketing airline.
8. In operating or holding out the authorized services on the agreed routes, any designated airline of either Party may also enter into commercial arrangements such as any type of lease agreement with designated airlines of either Party and/or an airline or airlines of a third country, subject to the compliance of operational and aviation security provisions referred to in this Agreement.

## **ARTICLE 10**

### **Exemption from Taxes, Customs Duties and other Charges**

1. Aircraft operated on international air services by a designated airline of one Party, as well as their regular equipment, spare parts, supplies of fuel and lubricants, aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempted from all taxes, customs duties, inspection fees and other similar charges on arriving in the territory of the other Party, provided such equipment, spare parts, supplies and stores remain on board the aircraft up to such time as they are re-exported or are used or consumed by such aircraft on flights over that territory.
2. There shall also be exempt from the taxes, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:
  - a) aircraft stores taken on board in the territory of one Party, within reasonable limits, for use on an outbound aircraft engaged in an international air service of a designated airline of the other Party;
  - b) spare parts, including engines, introduced into the territory of one







Party for the maintenance or repair of aircraft engaged in an international air service of a designated airline of the other Party;

c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of one Party for use in an international air service of a designated airline of the other Party, even when these supplies are to be used on the part of the journey performed over the territory of the first mentioned Party, in which territory they are taken on board.

d) airline documents, such as tickets and air waybills, as well as publicity and promotional material within reasonable limits, intended for use by a designated airline of one Party and introduced into the territory of the other Party.

3. Materials referred to in paragraph 2 of this Article may be required to be kept under customs supervision or control.
4. The regular airborne equipment, as well as the materials, supplies and spare parts normally retained on board aircraft operated by a designated airline of one Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that Party. In such case, they 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.
5. Baggage and cargo in direct transit across the territory of a Party shall be exempt from taxes, customs duties, fees and other similar charges not based on the cost of services on arrival or departure.
6. The exemptions provided by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

## ARTICLE 11

### User Charges

1. User charges that may be imposed by the competent charging bodies on designated airlines of the other Party shall be just, reasonable, and not unjustly discriminatory.





2. Each Party shall encourage consultations among the competent charging bodies in the territory and the airlines using the services and facilities, and shall encourage the competent charging bodies and the airlines to exchange information as may be necessary to permit an accurate review of the reasonableness of the charges.

## **ARTICLE 12**

### **Competition among Airlines**

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in providing the international air transportation governed by this Agreement.
2. The capacity of international air transport offered by the designated airlines shall be determined freely by each of them.
3. Neither 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 Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention and always on a non-discriminatory basis.
4. Each Party shall adopt all such measures as required within their jurisdiction to prevent any form of discrimination or unfair competition practices affecting the competitiveness of the airlines of the other Party.
5. Each Party shall minimize the administrative burdens of filing requirements and procedures on designated airlines of the other Party and ensure that such burdens and procedures are applied upon a non-discriminatory basis.

## **ARTICLE 13**

### **Pricing**

1. Each designated airline shall establish the prices for air transportation. Intervention by the Parties shall be limited to:
  - a. prevention of unreasonably discriminatory prices or practices;







- b. consumer protection 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. Neither aeronautical authority of the Parties shall take unilateral action to prevent the introduction of a proposed price or a price charged by a designated airline of either Party, except as set out herein in paragraphs 3 and 4 of this Article.
3. Prices to be charged to or from its territory by airlines of either Party shall be submitted to the aeronautical authorities of the other Party or to the corresponding entities for notification or registration.
4. If either Aeronautical Authority of the Parties believes that the price proposed or in effect is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible. Aeronautical authorities of both Parties shall make their best effort to settle the issue. Each Party may request consultations. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for a reasonable resolution of the issue. If the Parties reach agreement with respect to a tariff for which a notice of dissatisfaction has been given, each Party shall make its best effort to put that agreement into effect. Without such mutual agreement, the price shall remain in force.

## ARTICLE 14

### Consultations and Amendments

1. Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 45 days from the date the other Party receives the request, unless otherwise agreed.
  2. Any amendment to this Agreement shall become effective upon the exchange of notes, through diplomatic channels, whereby the two Parties inform one another that they have completed the formalities required by their national legislation.
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## ARTICLE 15

### Settlement of Disputes

1. Any dispute arising between the Parties as to the interpretation or application of this Agreement shall be first settled by consultations between the Parties. If the Parties fail to reach a settlement through consultation, they can agree to submit the dispute to an arbitral panel.
2. This arbitral panel shall be composed of three members established as follows:
  - a) Each Party shall designate an arbitrator within 30 days after receipt of the request of arbitration. Within 60 days after the two arbitrators have been appointed, they shall appoint, by mutual agreement, a third arbitrator, who will act as President of the arbitration panel; and
  - b) If either Party does not designate an arbitrator or if the third arbitrator is not designated as stated in subparagraph a), the arbitrator or arbitrators shall, at the request of either Party, be designated by the President of the Council of the International Civil Aviation Organization within 30 days. If the President of the Council is a national of either Party, the appointment shall be made by the most senior Vice President who is not disqualified for the same reason.
3. The Parties undertake to comply with the procedure, decisions and the judgment handed down by the arbitral panel. If decisions handed down in accordance with this Article are not observed by either Party or the designated airlines of either of them, the other Party may limit, impede, or revoke any right or privilege granted to the other non-compliant Party pursuant to this Agreement.
4. Costs incurred as a result of the arbitral panel shall be shared equally by the Parties.

## ARTICLE 16

### Termination

1. Either Party may, at any time, give notice in writing to the other Party of its decision to terminate this Agreement through diplomatic channels. Such notice shall be sent simultaneously to the International Civil Aviation
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Organization. This Agreement shall terminate 12 months after receipt by the other Party of the relevant notice, unless such notice is withdrawn before the expiry of the above term by mutual agreement of the Parties.

2. Should the Party fail to acknowledge receipt of the notice of termination, such notice shall be deemed to have been received 14 days after the date ICAO acknowledges receipt thereof.

## **ARTICLE 17**

### **Multilateral Agreement**

Should a multilateral agreement adopted by both Parties with regard to any matter referred to herein become effective, this Agreement shall be adjusted to the provisions of the multilateral agreement.

## **ARTICLE 18**



### **Registration with ICAO**

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

## **ARTICLE 19**

### **Non-Discrimination**

The Parties understand that this Agreement is based on the Principle of Mutual Non-Discrimination, in terms that each Party shall grant to the other Party an equal and non-discriminatory treatment concerning the airlines designated by each Party, particularly in relation to the rights and obligations set forth in this Agreement, including, but not limited to, taxes, tariffs, prices, commercial opportunities, security, use of airports, assignment of slots, or the exercise of the traffic rights agreed in this Agreement.





## ARTICLE 20

### Entry into Force

This Agreement shall enter into force 60 days after the date of the last exchange of notes whereby one of the Parties communicates to the other Party, through the diplomatic channels, that all necessary internal procedures have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE AT ....., this .... day of ....., ....., in two identical copies, in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF CHILE

FOR THE GOVERNMENT OF  
REPUBLIC OF KENYA





## RECORD OF DISCUSSION

Representatives of Belize and the Republic of Kenya, the members of which appear in the list attached as (**Appendix I**), met in Bogota, Colombia during the ICAN2021 conference on 09<sup>th</sup> December 2021 to discuss and initial an Air Services Agreement (herein and after referred to as the 'Agreement' between Belize and the Government of the Republic of Kenya).

The negotiations were held in a cordial and friendly atmosphere, and both delegations expressed their desire to establish their aeronautical relations in a spirit of cooperation and complete understanding for their mutual benefits.

Both Parties agreed on the following:

1. **Air Services Agreement:**

The representatives of both Parties initialed an Air Services Agreement between Belize and the Government of the Republic of Kenya. Both Contracting Parties will apply the Agreement initialed today provisionally until it comes into force subject to Article (21) of the Agreement. (**Appendix II**)

2. **Designation of Airlines:**

Pursuant to Article (4) (Designation and Authorization) of the Agreement, Belize accepted the designation of multiple airline (s) of the Republic of Kenya and on the other hand the Government of the Republic of Kenya accepted the designation of multiple airline (s) of Belize.

3. **Frequency and Traffic Rights:**

The designated airlines of each Contracting Party shall be entitled to operate any number of frequencies per week with any type of aircraft for passenger/combi and/or all cargo flights as per the rout schedule annexed to the Agreement.

4. **Fifth Freedom**

Both delegations have agreed that the rights of the designated airline of one Contracting Party to operate flights for the carriage of passengers, baggage, cargo and mail between the points in the territory of the other Contracting Party and points in the territory of third countries (5th freedom traffic rights) shall be subject to a separate agreement between the Aeronautical Authorities of the Contracting Parties.

5. **Stop-over Passengers:**

Both delegations have agreed for the designated airlines to pick up and discharge stop-over traffic at any point of the route schedule, provided that stop over time does not exceed fifteen (15) day at any point.

6. **Code- Share Operations:**

Both delegations have agreed for the designated airlines to enter into cooperative arrangements according to (**Appendix III**).

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**7. Use of Leased Aircraft:**

- (a) Subject to sub-paragraph (b), the designated airlines of each Party may operate services under the Agreement by using owned and/or any dry or wet leased aircraft which meet applicable safety and security requirements, provided that this would not result in a lessor airline exercising traffic rights it does not have.
- (b) Each Party may prevent the use of leased aircraft for services under the Agreement which it does not comply with Article (9 Aviation Security) and Article (10 Aviation Safety).

**8. Non-Scheduled/ Charter Operations:**

Both Delegations affirmed the intention of their Aeronautical Authorities to positively consider applications for non-scheduled flights in accordance with national laws and regulations.

**9. Avoidance of Double Taxation:**

Both sides agree to recommend to their competent authorities to conclude an agreement for avoidance of double taxation on revenue, capital and profits arising from their respective airlines activities and income in the territory of the other Contracting Party.

**10. Effect of the Record of Discussion:**

The two delegations have agreed that the contents of this Record of Discussion shall come into effect from the date of signature of Done in Bogota, Colombia this 9<sup>th</sup> day of December, 2021.



**HON. ANDRE PEREZ  
MINISTER, MINISTRY OF THE BLUE  
ECONOMY AND CIVIL AVIATION**

For Belize



**NICHOLAS BODO  
DIRECTOR, AIR TRANSPORT**

For the Aeronautical  
Authority of the Republic of  
Kenya





**List of Belize Delegation:**

**APPENDIX I**

<b>HON. ANDRE PEREZ</b>	<b>HEAD OF DELEGATION</b>
Minister, Ministry of Blue Economy and Civil Aviation	
<b>MRS. KENNEDY CARRILLO</b>	<b>MEMBER</b>
CEO, Ministry of Blue Economy and Civil Aviation	
<b>MR. NIGEL CARTER</b>	<b>MEMBER</b>
Director of Civil Aviation	
The Belize Department of Civil Aviation	
<b>MS. JULIE TORRES</b>	<b>MEMBER</b>
Legal Advisor	
The Belize Department of Civil Aviation	
<b>MRS. IMELDA BAUTISTA</b>	<b>MEMBER</b>
Belize Focal Point Air Services Agreement (ICAN2021)	
The Belize Department of Civil Aviation	





## THE DELEGATION OF THE REPUBLIC OF KENYA

1.	Mr. Bodo Nicholas Otieno	Director, Air Transport State Department of Transport <b>Head of Delegation</b>
2.	Ms. Rugut Angelah Cherotich	Assistant Director, Air Transport State Department of Transport
3.	Ms. Mbugua Racheal Nyambura	State Counsel Office of Attorney General and Department of Justice
4.	Ms. Elizabeth Choge	Chief State Counsel Ministry of Foreign Affairs
5.	Mr. Joseph Koech	Ag. Manager, Air Transport Kenya Civil Aviation Authority
6.	Ms. Ettah Muango	Legal Counsel Kenya Airports Authority
7.	Mr. Yagomba William	Aviation Expert African Express Airways
8.	Mr. Isaac Mwangi	Manager Government and Industry Affairs Kenya Airways PLC



**Commercial Opportunities**

1. In operating Or holding out the authorized services on the routes agreed under this Agreement any designated airline of one Contracting Party may enter into cooperative marketing arrangements such as, but not limited to, blocked-space, code-sharing, joint venture, or leasing arrangements, with
  - a) an airline or airlines of either Party;
  - b) an airline or airlines of a third country; and
  - c) a surface transportation provider of any country;provided that all participants in such arrangements (i) hold the appropriate authority; and (ii) meet the requirements applied to such arrangements.
2. The Contracting Parties agree to take necessary action to ensure that consumers are fully informed and protected with respect to code-shared flights operating to or from their territory.





**Appendix II**

**AGREEMENT BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF KENYA  
AND  
BELIZE  
FOR AIR SERVICES**







The Government of the Republic of Kenya; and

Belize;

Hereinafter referred to as (the Contracting Parties)

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of the establishing air services between and beyond their respective territories;

Have agreed as follows:





**ARTICLE 1**  
**Definitions**

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

1. 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 the Convention under Articles 90 and 94 thereof, so far as those Annexes and amendments have become effective for or been ratified by both Contracting Parties;
2. The term "**Agreement**" means this Agreement, the Annex attached hereto and any amendments thereto;
3. The term "**Aeronautical Authorities**" means: in the case of the Government of the Republic of Kenya the Cabinet Secretary in charge of civil aviation; and in the case of Belize, the Belize Department of Civil Aviation, and in both cases any person or body authorized to perform any functions at present exercisable by the said authorities;
4. The term "**designated Airline**" means an airline that has been designated and authorized in accordance with Article (4) of this Agreement;
5. The terms "**air service**", "**international air service**", "**airline**" and "**stop for non-traffic purpose**", have the meanings respectively assigned to them in Article 96 of the Convention;
6. The term "**capacity**" in relation to an aircraft means the payload of the aircraft available on the route or section of a route; and in relation to a specified air service means the capacity of the aircraft, used on such service, multiplied by the frequency of the flights, operated by such an aircraft over a given period on a route or section of a route;
7. The terms "**agreed services**" and "**specified routes**" have the meaning respectively of scheduled international air services and of routes specified in the annex to this Agreement, respectively
8. The term "**tariff**" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.



9. The term "**user charges**" means fees and rates levied to airlines by the competent authorities for the use of airports, navigational facilities and other related services offered by one Contracting Party to the other.
10. The term "**territory**" in relation to a State; means the land area and territorial waters adjacent thereto as also the airspace above them under the sovereignty of that state.

## **ARTICLE 2**

### **Applicability of Chicago Convention**

The provisions of this Agreement shall be subject to the provisions of the Convention in so far 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 scheduled international air services:
  - a) the right to fly across the territory of the other Contracting Party without landing;
  - b) the right to make stops in the said territory for non-traffic purposes.
  - c) The right to make stops in the said territory at the points on the route(s) specified in the Route Schedule annexed to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail, separately or in combination
2. Nothing in paragraph 2 shall be deemed to confer on the designated airlines of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Contracting Party.

## **ARTICLE 4**

### **Designation and Authorization**

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purposes of operating the agreed services on the specified routes.
2. On receipt of such designations, each Contracting Party shall, subject to the provisions of paragraphs (a) and (b) of this Article, without delay





grant to the designated airline the appropriate operating authorizations; provided that:

- (a) Substantial ownership and effective control are vested in the Party designating the airline, its nationals or both;
- (b) The designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation
3. On receipt of the operating authorization of paragraph (2), a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

#### **ARTICLE 5**

#### **Revocation and Suspension of Operating Authorization**

1. The aeronautical authorities of each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in Article 3 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 these rights, where:
  - (a) in the case of a designated airline, they are not satisfied that substantial ownership and effective control of that designated airline are vested in the Contracting Party designating the airline, its nationals, or both;
  - (b) in the case the designated airline fails to comply with laws or regulations of the Contracting Party granting these rights; or
  - (c) in case the designated airline fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate revocation, suspension, or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringement of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party, in conformity with Article 14 of this Agreement.







**ARTICLE 6**  
**Exemption from Customs and other Duties**

1. Aircraft operated on international air services by the designated airline of either Contracting Party, as well as their regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages, liquor, tobacco and other products) on board such aircraft shall be exempted from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Contracting Party, provided that such equipment and supplies remain on board of the journey performed over that territory.
2. The following shall also be exempted from the same duties, fees and charges, with the exception of charges corresponding to the service performed:
  - (a) aircraft stores taken on board in the territory of a Contracting Party, within limits fixed by the authorities of the said Contracting party, and for use on board outbound aircraft engaged in an international air service of the other Contracting Party;
  - (b) spare parts and regular equipment introduced into the territory of either Contracting Party for the maintenance or repair of aircraft used on international air services by the designated airline of the other Contracting Party;
  - (c) fuel and lubricants supplied in the territory of a Contracting Party to outbound aircraft of a designated airline of the other Contracting Party engaged in an international air service, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board;
  - (d) advertising materials, uniform items and airline documentation having no commercial value used by the designated airline of one Contracting Party in the territory of the other Contracting Party;
  - (e) the office equipment introduced in the territory of either Contracting Party in order to be used in the offices of the designated airline of the other Contracting Party provided that such equipment is at the disposal of those offices during (3) three years from the date of their introduction into the territory and the principle of reciprocity applies. This is to be accomplished in compliance with the applicable laws and regulations of each specific Contracting Party.

Materials referred to in sub-paragraphs (a), (b) and (c) of this paragraph may be required to be kept under customs supervision or control.





3. Passengers, baggage and cargo in direct transit across the territory of one Contracting Party and not leaving the area of the airport reserved for such purpose shall be subject to a simplified control, Baggage and cargo in direct transit shall be exempt from customs and other similar taxes.
4. 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 the customs authorities of the territory. In such a case, they 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** **Competition among Airlines**

1. Each Contracting Party shall allow a fair and equal opportunity for the designated airlines of both Contracting Parties to compete in providing the international air transportation governed by this Agreement.
2. The capacity of international air transport offered by the designated airlines shall be determined freely by each of them.
3. Neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regulatory of service, or the aircraft type operated by the designated airline 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 and always on a non-discriminatory basis.
4. Both Contracting Parties shall adopt all necessary measures within their jurisdiction to prevent any form of discrimination or unfair competition practices affecting the competitiveness of the designated airline of the other Contracting Party.
5. Each Contracting Party shall minimize, permitted by their national laws, the administrative burdens of filing requirements and procedures on designated airline of the other Contracting Party and ensure that such burdens and procedures are applied on a non-discriminatory basis.

#### **ARTICLE 8** **Tariffs**

1. Each Contracting Party shall allow its designated airline to apply tariffs for air services covered within this Agreement based upon commercial considerations in the market place. Neither Contracting Party shall





require its designated airline to consult other airlines about the tariffs they charge or propose to charge for services covered by this Agreement. Provided that the tariffs to be applied by the said designated airline are reasonable giving due regards to all relevant factors, including the interests of users, costs of operation, characteristics of services and reasonable profits.

2. Each Contracting Party may require notification or filing of any tariff to be charged by its Contracting Party. Such notification or filing may be required days before the proposed date of introduction, and in special cases this period may be reduced.
3. Intervention by the Contracting Parties shall be limited to:
  - (a) the protection of consumers against excessive tariffs due to abuse of market power;
  - (b) the prevention of tariffs that result from behavior that has the effect of preventing or lessening competition substantially in a given market; or
  - (c) where they may appear to be unreasonably discriminatory, highly or restrictive because of the abuse of a dominant position, or artificially low due to direct or indirect governmental subsidy or support.
4. Each Contracting Party may unilaterally disallow any tariff charged by its own designated airline. Provided that such intervention shall be made only if it appears to the aeronautical authority of that Contracting Party that a tariff charged or proposed to be charged meets either of the criteria set out in paragraph (3) of this Article.
5. Neither Contracting Party shall take unilateral action to prevent the coming into effect or continuation of a tariff charged or proposed to be charged by the designated airline of the other Contracting Party. Provided that where a Contracting Party believes that any such tariff is inconsistent with the considerations set out in paragraph (a) of this Article. It may request consultations with the other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held not later than (14) fourteen days after receipt of the request. Without a mutual agreement the tariff shall take effect or continue in effect.

## **ARTICLE 9**

### **Aviation Security**

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an





integral part of this Agreement. Without limiting their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Conventions for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on the 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, the Protocol for the Suppression of Unlawful Acts of Violence at Airport Serving international Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marketing of Plastic Explosive for the Purpose of Detection, signed at Montreal on 1 March 1991, and the provisions of multilateral agreements and protocols relating to the security of aviation which will become binding on both Contracting Parties.

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 both Contracting Parties; they shall require that operators of aircraft of their registry, operators of aircraft who have their principle 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.
4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph (3) of this Article in accordance with the laws and regulations in force required by the other Contracting Party for entry into, departure from, or while within, the territory of that Contracting Party.
5. Each Contracting Party shall ensure that adequate measures are effectively applied with its territory 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 positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.
6. 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, the Contracting Party






shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

7. Should one Contracting Party have problems with regard to the aviation security provisions of this Article, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

#### **ARTICLE 10** **Aviation Safety**

1. Each Contracting Party may request consultations at any time concerning safety standards in any area to aeronautical facilities, flight crew, aircraft or their operation maintained by the other Contracting Party. Such consultations shall take place within (30) thirty 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 the areas referred to in paragraph 1 that meet the standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, at first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, of the other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within (15) fifteen days or such longer period as may be agreed between the Parties, shall be grounds for the application of Article 5 of this Agreement.
3. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated airline of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of a search by the authorized representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment, and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention (in this Article called "ramp inspection"), provided this does not lead to unreasonable delay.
4. If any such ramp inspection or a 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 the time pursuant to the Convention, or
  - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at the 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 certificates 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 a designated airline of one Contracting Party in accordance with paragraph (3) of this Article is denied by the representative of that airline, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article arise and draw the conclusions referred to in that paragraph.
6. Each Contracting Party reserves the right to suspend or vary the operating authorization of the designated airline 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 paragraph (2) or (6) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

#### **ARTICLE 11**

#### **User Charges**

Any charge that may be imposed or permitted to be imposed by a Contracting Party for the use of airports and air navigation facilities by the aircraft of that other Contracting Party shall not be higher than those that would be paid by its national aircraft engaged in scheduled international air services.



**ARTICLE 12**  
**Applicability of National Legislation**

1. The laws and regulations of a Contracting Party regarding the admission to or departure from its territory of Passengers, crew and cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, currency, health and quarantine shall be complied with by or on behalf of such passengers, crew or cargo upon early into or departure from, or while within the territory of that Contracting Party.
2. The laws and regulations of a Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft shall be applied to aircraft of the other Contracting Party while within its territory.

**ARTICLE 13**  
**Commercial Activities**

1. The designated airline of each Contracting Party shall on the basis of reciprocity have the right to establish offices in the territory of the other Contracting Party for the promotion and sale of air services.
2. The designated airline of each Contracting Party shall be allowed in accordance with the laws, regulations and rules of the other Contracting Party relating to entry, residence and employment, to bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational and other specialist staff required for the provision of air services.
3. The designated airline of each Contracting Party may engage in the sale of air services in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents. Each airline shall have the right to sell such transportation and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.
4. Each Contracting Party shall permit the designated airline of the other Contracting Party to convert and remit to its country, on demand, local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restriction or taxation at the rate of exchange applicable to current transactions and



remittance as of the date. Request for conversion and remittance in accordance with the Regulations of each State.

5. The designated airline of each Contracting Party shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Party in local currency. At their discretion, the designated airline of each Contracting Party may pay for such expenses in the territory of the other Contracting Party in freely convertible currencies according to local currency regulation.
6. Notwithstanding anything contained in this Article, the exercise of rights under this Article shall be in accordance with the applicable domestic laws, regulations and rules, and the Contracting Parties stipulate that the laws, regulations and rules shall be administered in a non-discriminatory fashion and consistent with the purposes of the Agreement,
7. Each designated airline of a Contracting Party be permitted, on the basis of reciprocity have the right to perform its own ground-handling in the territory of the other Contracting Party (self-handling) or, at its option, select among competing agents for such services in whole or in part. The exercise of these rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all designated airlines; charges shall be based on the costs of services provided; and such shall be comparable to the kind and quality of services which would be available if self-handling were possible.
8. Notwithstanding any other provision of this Agreement, designated airlines and indirect providers of cargo transportation of both Contracting Parties shall be permitted, without restriction, to employ in connection with international air services any surface transportation for cargo to or from any points in the territories of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. The designated airlines may elect to perform their own surface transportation or to provide it through operated by other airlines and indirect providers of cargo air services. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.





#### **ARTICLE 14** **Consultations**

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and the Annexed Schedules and shall consult when necessary to provide for modifications thereof.
2. Either Contracting Party may request consultation in writing which shall begin within a period of (60) sixty days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

#### **ARTICLE 15** **Settlement of Disputes**

1. Any dispute arising between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first instance endeavor to settle it by consultations and negotiations.
2. If this Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, 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 Contracting Party of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal, 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, the president of the Council of the International Civil Aviation Organization may at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In all cases, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal. The arbitral tribunal shall reach its decision by majority of votes. In all other respects the arbitral tribunal shall determine its own procedure.
3. If and for so long as either Contracting Party fails to comply with a decision given under paragraph 2 of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Contracting Party in defaults.



4. Each Contracting Party shall bear the expenses and remuneration necessary for its arbitrator; the fee for the third arbitrator and the expenses necessary for this one as well as those due to the activity of the arbitration shall be equally shared by the Contracting Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 2 of this Article.

If the Contracting Parties fail to reach a settlement by the aforementioned means, any of the Contracting Parties may terminate this agreement by giving notice in writing to the other Contracting Party of its intention to terminate the agreement.

#### **ARTICLE 16** **Amendments**

1. If either of the Contracting Parties desires to modify any provision of this Agreement including the Annex, such consultation shall begin within a period of sixty (60) days from the date of receipt of such request.
2. Any amendment shall enter into force when confirmed by an exchange of diplomatic notes.

#### **ARTICLE 17** **Registration with the International Civil Aviation Organization**

This Agreement and any subsequent amendments thereto shall be registered upon its entry into force with the International Civil Aviation Organization.

#### **ARTICLE 18** **Recognition of Certificates and Licenses**

1. Certificate of airworthiness, certificates of competency and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the established air services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its territory, of certificates of



competency and licenses granted or authorized to its own nationals by the other Contracting Party or by any other side.

2. If the privileges or conditions of the licenses or certificates referred to in paragraph (1) of this Article, issued by the Aeronautical Authorities of one Contracting Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services should on the specified routes would be permit a difference from the minimum standards established under the Convention, and which difference has been filed with the international Civil Aviation Organization, the Aeronautical Authorities of the other Contracting Party may request consultations in accordance with Article (14) of this Agreement between the Aeronautical Authorities with a view to clarify themselves that the practice in question is satisfied. Failure to reach a satisfactory agreement will constitute grounds for the application of Article (5) of this Agreement.
3. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by another Contracting Party.

#### **ARTICLE 19** **Conformity with Multilateral Conventions**

If a general multilateral air transport convention or agreement comes into force in respect with both Contracting Parties, this Agreement and its Annexes shall be deemed to be amended so as to conform with the provision of that multilateral convention or agreement.

#### **ARTICLE 20** **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 (12) twelve 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, the notice shall be deemed to have been received (14) fourteen days after the receipt of the notice by the International Civil Aviation Organization.





**ARTICLE 21**  
**Entry into Force**

This agreement shall be in accordance with the internal legal requirements of each Contracting Party and shall enter into force on the date of the receipt of the last notification, through diplomatic channels, by the Contracting Parties confirming the fulfillment of the said procedures of internal legal requirements.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at.....this.....day of..... in two identical copies in English language.

For the Government of  
the Republic of Kenya

For Belize

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**ANNEX**  
**Route Schedule (1)**

1. Routes to be operated by the designated airline of the Republic of Kenya:

(1)	(2)	(3)	(4)
From	Intermediate Points	Points in Belize	Beyond Points
Any points	Any points	Any points	Any points

2. The designated airline of the Government of the Republic of Kenya may, on all or any flights, omit calling at any of the points in columns (2) and (4) of this Route Schedule, provided that the agreed services on these routes begin in column (1).

**Route Schedule (2)**

1. Routes to be operated by the designated airline(s) of Belize:

(1)	(2)	(3)	(4)
From	Intermediate Points	Points in the Republic of Kenya	Beyond Points
Any points	Any points	Any points	Any points

2. The designated airline(s) of Belize may, on all or any flights, omit calling at any of the points in columns (2) and (4) of this Route Schedule, provided that the agreed services on these routes begin at a point in column (1).
3. Intermediate points and/or beyond points on any of the specified routes are to be specified and agreed by the aeronautical authorities of both Contracting Parties.
4. The exercise of fifth freedom traffic rights on the specified intermediate and/or beyond points shall be subject to the approval of the aeronautical authorities of both Contracting Parties.





## RECORD OF DISCUSSIONS

Delegations representing the Government of the Republic of Suriname and the Government of the Republic of Kenya met in Bogota Colombia, on the 8<sup>th</sup> of December, 2021 for consultations for the purpose of negotiating an Air Services Agreement and related arrangements which would be applicable in respect of the operations of air transportation between and beyond their respective countries.

Discussions were held in a very friendly atmosphere. The composition of the two Delegations is attached as "Attachment A".

The following understandings were reached between the Delegations:

### 1. Air Services Agreement Text

The Delegations agreed on the need to sign an Air Services Agreement and exchanged the text of the Air Services Agreement attached as "Attachment C".

### 2. Designation

- a) The Delegation of the Republic of Kenya designated Kenya Airways as Designated Airlines of the Republic of Kenya. Additional airline(s) may be designated in due course by the Aeronautical Authority of the Republic of Kenya through diplomatic channels.
- (b) The Delegation of Suriname designated Surinam Airways and Fly Allways as Designated Airlines of Suriname. Additional Surinamese airline(s) may be designated in due course by the Minister of Transport, Communication and Tourism through diplomatic channels.

### 3. Principles Governing Operations of Agreed Services

With regard to Article 5 (Principles Governing Operation of Agreed Services) of the initialed Agreement, both Delegations confirmed that there shall be no restriction whatsoever on the routes, capacity, the number of frequencies and types of aircraft, whether owned or leased, to be operated by the Designated Airline(s) of each Contracting Party in passenger and/or cargo services, separately or in combination, as per the Route Schedule annexed to the Air Services Agreement.

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**4. Exercise of Fifth Freedom Traffic Rights**

With regard to Paragraph 2 of Annex to the initialed Agreement, both Delegations confirmed that, in addition to full unrestricted third and fourth freedom traffic rights, the Designated Airlines of each Contracting Party are entitled to exercise full unrestricted fifth freedom traffic rights at any intermediate and/or beyond points of their own choice while operating any type of services (passenger and/or cargo, separately or in combination) subject to approval of the aeronautical authorities.

**5. Non-Scheduled Operations / Charter Flights**


Both Delegations affirmed the intention of their Aeronautical Authorities to positively consider applications for both passenger, cargo/ non-scheduled flights in accordance with national laws and regulations.

**6. Avoidance of Double Taxation**

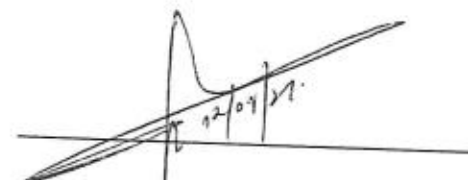
Both Delegations agreed to recommend to their respective competent authorities to conclude an agreement for the avoidance of double taxation on revenues arising from their airlines' activities and income earned by their employees when stationed in the territory of the other Contracting Party.

This Record of Discussions shall come into effect on the date of its signature.

Signed in Bogota, Colombia on the 8<sup>th</sup> of December, 2021.



Nicholas E. Bodo  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF KENYA



H. E. Albert E. Jubithana BBA  
FOR THE GOVERNMENT OF  
THE REPUBLIC OF SURINAME

---

Delegation of the Republic of Suriname

1. H. E. Albert E. Jubithana BBA  
Minister for Transport, Communication and Tourism  
**Head of Delegation**
2. Marcia Baumgart  
Personal Assistant to the Minister
3. Ms. Ranu Mathura  
Advisor Air and Space Law
4. Cindy Toemin  
Policy advisor to the Minister





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Delegation of the Republic of Kenya

- |    |                             |   |
|----|-----------------------------|---|
| 1. | Mr. Bodo Nicholas Otieno    | Director, Air Transport<br>State Department of Transport<br><b>Head of Delegation</b> |
| 2. | Ms. Rugut Angelah Cherotich | Assistant Director, Air Transport<br>State Department of Transport                    |
| 3. | Ms. Mbugua Racheal Nyambura | State Counsel<br>Office of Attorney General and<br>Department of Justice              |
| 4. | Ms. Elizabeth Choge         | Chief State Counsel<br>Ministry of Foreign Affairs                                    |
| 5. | Mr. Joseph Koech            | Ag. Manager, Air Transport<br>Kenya Civil Aviation Authority                          |
| 6. | Ms. Ettah Muango            | Legal Counsel<br>Kenya Airports Authority   |
| 7. | Mr. Yagomba William         | Aviation Expert<br>Safari Express Cargo Ltd.  |
| 8. | Mr. Isaac Mwangi            | Manager Government and Industry Affairs<br>Kenya Airways PLC                          |



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**Air Services Agreement (ASA) Between the  
Government of the Republic of Kenya and  
the Government of the Republic of Suriname**



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# Air Services Agreement

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## Preamble

The Government of the Republic of Kenya and the Government of the the Republic of Suriname (hereinafter, "the Contracting Parties");

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

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:







## Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

a) "Aeronautical authorities" means, in the case of the Government of Republic of Kenya the Cabinet Secretary in charge of civil aviation; in the case of the the Republic of Suriname the Minister of Transport, Communication and Tourism or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;

b) "Agreement" means this Agreement, its Annex, and any amendments thereto;

The term "Agreement" means this Agreement, the Annex attached thereto and any Protocols or similar documents amending this Agreement or the Annex.

c) "territory", "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them respectfully in Article 2 and 96 of the Convention;

d) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

e) "capacity" is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;

f) "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, insofar as such Annexes and amendments have become effective for both Parties;

g) "designated airline" means an airline which has been designated and authorized in accordance with Article \_ of this Agreement;

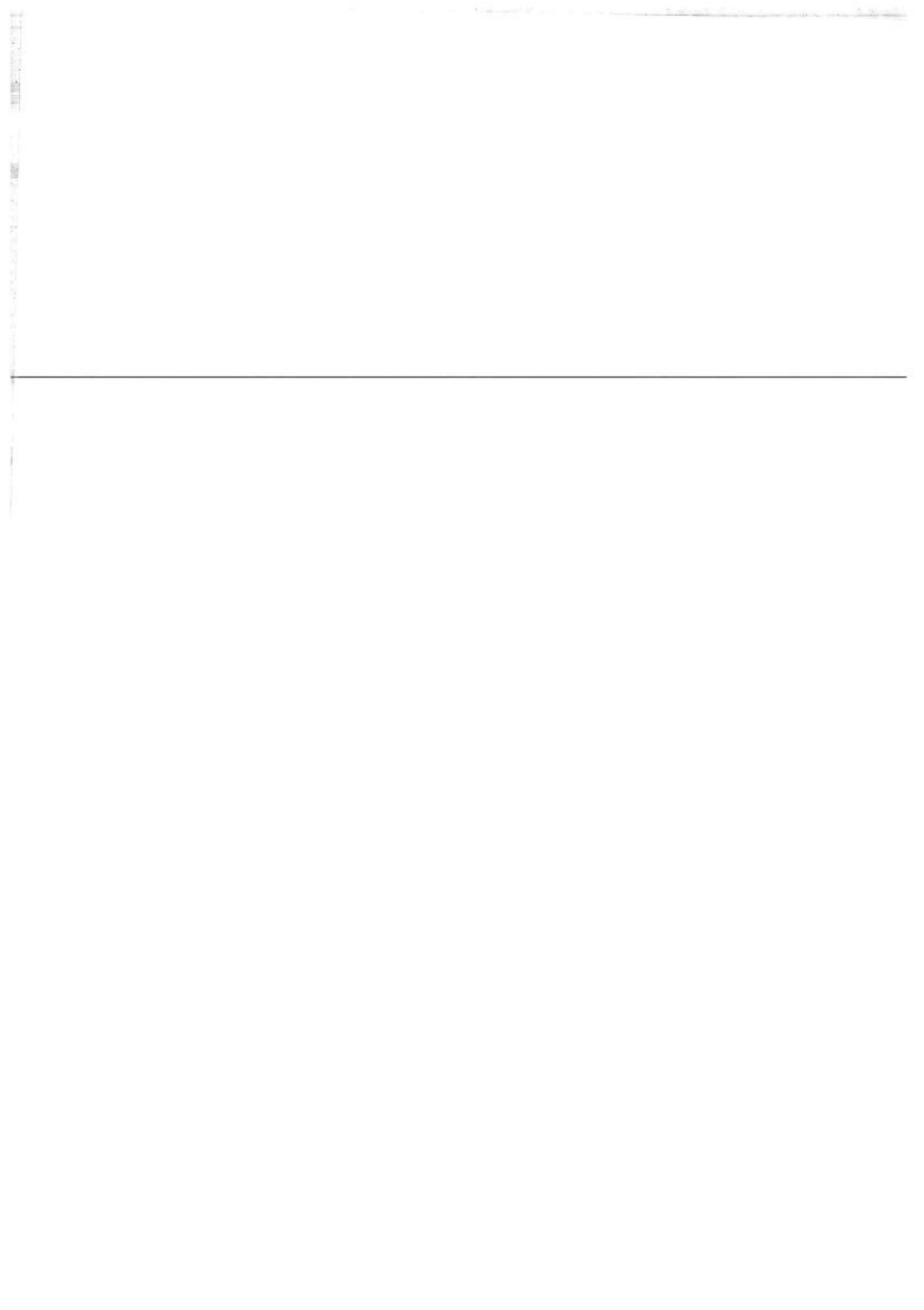
h) "ICAO" means the International Civil Aviation Organization;

i) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;

j) "Party" is a State which has formally agreed to be bound by this agreement;

k) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

The term "**tariff**" means the prices or charges to be paid for carriage of passengers, baggage and cargo (excluding remuneration and conditions for the carriage of mail) and the conditions under which those prices and charges apply, including commissions to be paid on the carriage for agency services, charges and conditions for any services ancillary to such carriage which are offered by airlines and also include any significant benefits provided in association with the carriage



l) "user charges" 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; and

m) The term "**Annex**" means the Annex to this Agreement or as amended in accordance with the provisions of Article of this Agreement. The Annex forms an integral part of this Agreement and all references to the Agreement shall include the Annex except where explicitly agreed otherwise

## **Article 2**

### **Grant of rights**

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:
  - a) the right to fly without landing across the territory of the other Party;
  - b) the right to make stops in the territory of the other Party for non-traffic purposes; and
  - 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 and mail separately or in combination without limitation regarding routes and frequencies and aircraft type which can be owned or leased.
  - d) 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 passengers and cargo including mail, in combination or separately arriving at or departing from third Party, without limitations regarding routes, frequencies and aircraft type which can be owned or leased.
3. The airlines of each Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.
4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.

## **Article 3**

### **Designation and authorization**

1. Each Party shall have the right to designate in writing to the other Party one or more airline(s) to operate the agreed services in accordance with this Agreement.





2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:

a) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;

b) the Party designating the airline is in compliance with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and

c) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate in whole or in part the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

#### **Article 4**

#### **Withholding, revocation and limitation of authorization**

1. The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article 3 of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:

a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party;

b) in the event of failure of the Party designating the airline to comply with the provisions set forth in Article 8 Safety and Article 9 Aviation Security; and

c) in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 20 Consultations, of this Agreement.

#### **Article 5**

#### **Application of Laws and Regulations**

1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.

2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and





health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.

3. Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

## **Article 6**

### **Direct transit**

Passengers, baggage, and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.



## **Article 7**

### **Recognition of certificates**

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.
3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.

## **Article 8**

### **Safety**

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.
  2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.
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3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.
4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.
5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.
6. With reference to paragraph 2, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

## Article 9

### Aviation security

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the 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, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to.
2. The 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 Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they 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. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request immediate consultations with the other Party at any time to discuss any such differences.
4. Each 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 Party for entry into, departure from, or while within, the territory of that other Party. Each 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 and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other 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, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.

## Article 10 User charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 21 Settlement of Disputes, to be in breach of a provision of this Article, unless:



- a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or
- b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

## Article 11

### Duties, Taxes and Fees

1. Each Party shall on the basis of reciprocity exempt a designated airlines of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:

- a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provide that such items may be required to be kept under customs supervision or control;
- b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or
- c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they 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 12

### Fair competition

- a) Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement. Each Contracting Party agrees to take action to eliminate all forms of discrimination or





unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.

### Article 13 Establishment of Tariffs

1. Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place.
2. Notwithstanding paragraph 1 of this Article, either Contracting Party may require information of tariffs proposed by its own airline, or the designated airline(s) of the other Contracting Party for carriage to or from its territory.
3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to;
  - (a) Prevent unreasonably discriminatory tariffs or practices;
  - (b) Protect consumers from tariffs that are unreasonably high or unreasonably restrictive due to the abuse of a dominant position or to concerted practices among air carries; and
  - (c) Protect airlines from tariffs that are artificially low because of direct or indirect government subsidy or support.
4. Without prejudice to the provisions of paragraph (3) of this Article, the aeronautical authorities of either Contracting Party may expressly disapprove tariff submitted by the designated airlines of the other Contracting Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority
  - a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and
  - b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.
5. The aeronautical authorities of each Contracting Party may request consultations with the aeronautical authorities of the other Contracting Party on any tariff charged by an airline of the other Contracting Party for international air services to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.





### **Article 14**

#### **Currency conversion and remittance of earnings**

Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.

### **Article 15**

#### **Sale and marketing of air service products**

1. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the airline's choice, including the right to establish offices, both on-line and off-line.
2. Each airline shall have the right to sell air transport services in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.

### **Article 16**

#### **Codesharing/Cooperative arrangements**

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:

- a) an airline or airlines of either Party; and
- b) an airline or airlines of a third country.

provided that all airlines in such arrangements (i) hold the appropriate authority and (ii) meet the requirements normally applied to such arrangements.

2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
- b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
- c) orally again, by the airline's ground staff at all stages of the journey.

3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Parties at least 30 days before its proposed introduction.



## **Article 17**

### **Environmental Protection**

The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.

## **Article 18**

### **Statistics**

The aeronautical authorities of each Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party.

## **Article 19**

### **Approval of schedules**

1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.
2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party.

## **Article 20**

### **Consultations**

In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.

## **Article 21**

### **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 in the first place endeavor to settle it by negotiation.
2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, 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 by such a tribunal 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



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the third arbitrator is not appointed within the period specified, the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.

4. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.

5. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.

6. Either Contracting Party or the Designated Airline of either 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 hereof.

## Article 22 Amendment

Any amendments of this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of diplomatic notes.

## Article 23 Multilateral agreements

If a multilateral agreement concerning air transport comes into force in respect of both Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that multilateral agreement.

## Article 24 Termination

Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Party, or any shorter period of time as may be agreed by both Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.



## Article 25 Registration with ICAO

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

## Article 26 Entry into force

This Agreement shall be applied provisionally from the date of its signature and shall enter into force as soon as the two Contracting Parties have notified each other by an exchange of diplomatic notes, that their respective constitutional procedures for the entry into force of this agreement have been completed.

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

Done at...., this ... Day of ... in the year ... in duplicate original copies in English both texts being equally authentic.

For the Government of the  
Republic of Kenya

For the Government of the Democratic  
People's Republic of Suriname








## Annex I Route schedules

Airlines of each Contracting Party designated under this Annex shall be entitled to provide air transportation between points on the following routes:

### For the designated airline(s) of the Republic of Kenya

Points of Departure	Intermediate Points	Points in the Republic of Suriname	Points Beyond Republic of Suriname
Points in the Republic of Kenya	Any Points	Paramaribo	Any Points

### For the designated airline(s) of the Democratic People's Republic of Suriname

Points of Departure	Intermediate Points	Points in the Republic of Kenya	Points Beyond Republic of Kenya
Points in the Republic of the Suriname	Any Points	Nairobi	Any Points

### Notes

1. The Designated Airlines of each Contracting Party may on any or all flights omit calling at any of the intermediate and/or beyond points mentioned above, provided that the Agreed Services on the routes begin or end in the Territory of the Contracting Party which has designated the Airlines.
2. The exercise of the fifth freedom traffic rights on specified intermediate and/or beyond points shall be subject to agreement between the Aeronautical Authorities of both Contracting Parties.



**Appendix 'C'**

**BILATERAL AIR SERVICES AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF KENYA**

**AND**

**THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA**



The Government of the United Republic of Tanzania and the Government of  
The Republic of Kenya (hereinafter, "the Parties");

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

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

Desiring to promote an international aviation system based on competition  
among Airlines in the marketplace with minimum government interference and  
regulation;

Desiring to conclude an agreement for the purpose of establishing and operating  
Air Services between and beyond their respective Territories;

Desiring to ensure the highest level of safety and security in international air  
transportation;

Have agreed as follows:



## **Article 1**

### **Definitions**

For the purpose of this Agreement, unless otherwise defined, the term:

1. "Aeronautical Authorities" means, in the case of the United Republic of Tanzania, the Minister responsible for Civil Aviation matters, and in the case of the Republic of Kenya, the Cabinet Secretary responsible for Civil Aviation matters or in both cases any person or body authorized to perform the functions at present exercised by said authorities;
2. "Agreed Services" means Air Services on the specified routes for the carriage of passengers, cargo and mail, separately or in combination;
3. "Agreement" means this Agreement, its Annexes, and any amendments thereto;
4. "Air Service", "International Air Service", "Airline" and "stop for non-traffic purposes" shall have the meaning respectively assigned to them in Article 96 of the Convention;
5. "Designated Airline" means an Airline or Airlines designated and authorized in accordance with Article 3 (Designation and Authorization) of this Agreement;
6. "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment





of the Annexes or the Convention under Articles 90 and 94 thereof, insofar as those Annexes and amendments have become effective for, or been ratified by both Parties;

7. "Price" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo in air transportation including any other mode of transportation in connection therewith charged by Airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
8. "Territory" in relation to a Party has the meaning assigned to it in Article 2 of the Convention;
9. "User charge" means a charge imposed on Airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities.

## **Article 2 Grant of Rights**

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Annex (Route Schedule) to this Agreement.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy, while operating an agreed service on a specified route, the following rights:



- (a) the right to fly without landing across the territory of the other Party;
  - (b) the right to make stops in the territory of the other Party for non-traffic purposes;
  - (c) the right to make stops at the point(s) on the route(s) specified in the Annex (Route Schedule) to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail; and
  - (d) The rights otherwise specified in this Agreement.
3. Nothing in this Article shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of that other Party.

### **Article 3**

#### **Designation and Authorization**

- 1. Each Party shall have the right, through diplomatic channels, to designate one or more Airlines to operate the Agreed Services, and to withdraw or alter such designation.
- 2. On receipt of such a designation, and of applications from the Designated Airline, in the form and manner prescribed for operating authorizations, the other Party shall grant the appropriate authorizations with minimum procedural delay, provided that:



- a. the Designated Airline is substantially owned and effectively Controlled by nationals and/or Government of the designating Party.
  - b. the Designated Airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Party considering the application or applications; and
  - c. the Party designating the Airline is maintaining and administering the standards set forth in Article 13 (Safety) and Article 14 (Aviation Security).
  - d. Notwithstanding paragraph 2(a) a party may grant appropriate authorization, on a case by case basis, to a Designated Airline whose principal place of business and effective regulatory control is in the territory of the designating party.
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 of Authorization**

1. Either Party shall have the right to withhold the authorizations referred to in Article 3 (Designation and Authorization) of the Agreement with respect to an Airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently, in the event that the Designated Airline fails to comply with



the provisions of paragraph 2 of Article 3 (Designation and Authorization), and Article 12 (Application of Laws) of 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 consultations between the Aeronautical Authorities in conformity with Article 17 (Consultations) of this Agreement.

#### **Article 5** **Commercial Activities**

1. The Airline(s) of each Party shall have the right to establish offices, in the Territory of the other Party for the promotion and sale of air transportation.
2. Each Party shall permit Airlines of another Party to:
  - a. bring into its Territory and maintain employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and
  - b. use the services and personnel of any other organization, company or Airline operating in its Territory and authorized to provide such services.





3. The representatives and staff shall be subject to the laws and regulations in force of the other Party, and consistent with such laws and regulations each party shall:

- a. on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 2 of this Article; and
- b. facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties.

5. The Airline(s) is permitted to, at its option, select among competing agents for ground handling services in whole or in part.

6. The Airline(s) may engage in the sale of air transportation in the Territory of the other Party directly and, at the Airline's discretion, through its agents. Each Airline shall have the right to sell such transportation, in the currency of that Territory or in freely convertible currencies.

7. Each Airline shall be permitted to pay for local expenses, including purchases of fuel, in the Territory of the other Party in local currency. At their discretion, the Airlines of each Party may pay for such expenses in the Territory of the other Party in freely convertible currencies according to local currency regulation.

8. In operating or holding out the authorized services on the agreed routes, any Designated Airline may enter into co-operative marketing



arrangements such as blocked-space, code-sharing, joint ventures or leasing arrangements, with

- a. an Airline or Airlines of either Party;
- b. an Airline or Airlines of a third country, provided that such third country authorizes or allows comparable arrangements between the Airlines of the other Party and other Airlines on services to, from and via such a third country; and

provided that all Airlines in such arrangements (1) hold the appropriate authority and (2) meet the requirements normally applied to such arrangements.

#### **Article 6 User Charges**

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the Designated Airlines of the other Party shall be just, reasonable, non-discriminatory, and equitably apportioned among categories of users. In any event, any such User charges shall be assessed on the Designated Airlines of the other Party on terms not less favorable than the most favorable terms available to any other Airline at the time the charges are assessed.
2. Neither Contracting Party shall 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 services.





3. Neither Contracting Party shall impose or permit to be imposed on the designated airlines of the other Contracting Party payment terms that are punitive or less favourable than those imposed on its own airlines operating similar international services.
4. Each Contracting Party shall encourage consultations on user charges between its competent charging authority or airport or air navigation service provider and airlines using the service and facilities provided by those charging authorities or service provider, where practicable through those airlines' representative organizations. 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. Each Contracting Party shall further encourage its competent charging authority, or service provider, and such users to exchange appropriate information concerning user charges.
5. Neither Party shall be held in dispute resolution procedures pursuant to Article 18 (Settlement of Disputes) to be in breach of a provision of this Article, unless (1) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (2) following such a review it fails to take all steps within its power to remedy any charge or practice that is not consistent with this Article.



**Article 7**  
**Fair Competition**

1. Each Party shall allow a fair and equal opportunity for each Designated Airline to compete in providing the international air transportation governed by this Agreement.
2. Each 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 airline(s) of the other Party.
3. Each Party shall allow any Designated Airline of the other Party to determine the frequency and capacity of the Agreed Services it offers based on the Airline's commercial considerations in the marketplace. Therefore, neither Party shall impose on the Designated Airline of the other Party any requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement. Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or of the aircraft type or types operated by the Designated Airline of the other Party, except as may be required for customs and other government inspection services, technical, or operational reasons under uniform conditions consistent with Article 15 of the Convention.
4. Neither Party shall impose on the Designated Airlines of the other Party a first-refusal requirement, uplift ratio, no-objection fee, or any other requirements with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.





## **Article 8**

### **Pricing**

1. Each Party shall allow Prices for air transportation to be established by Airlines of both Parties based upon commercial considerations in the marketplace. Intervention by the 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;
  - c. protection of Airlines from Prices that are artificially low due to direct or indirect governmental subsidy or support.
2. Either Party may require notification of or filing with its Aeronautical Authorities of Prices to be charged to or from its Territory by Airlines of the other Party. Such notification or filing by the Airlines may be required to be made not later than the initial offering of a Price, regardless of the form, electronic or other, in which the Price is offered.
3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a Price proposed to be charged or charged by the Designated Airlines of either Party for International Air Services between the Territories of the Parties. If either Party believes that any such Price is inconsistent with the consideration set forth in this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction within fourteen (14) days from receiving the filing. These consultations shall be held not later than fourteen (14) days after receipt



of the request. Without a mutual agreement, the Price shall go into effect or continue in effect.

### **Article 9 Customs Duties**

1. Each Party shall on the basis of reciprocity exempt a Designated Airline of the other Party to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges, not based on the cost of services provided on arrival, on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flight) and other items such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that Designated Airline intended for use or used solely in connection with the operation or servicing of aircraft of the Airline of such other Party operating the Agreed Services.
2. With regard to regular equipment, spare parts, supplies of fuels and lubricants and aircraft stores introduced into the Territory of one Party by or on behalf of a Designated Airline of the other Party or taken on board the aircraft operated by such Airline and intended solely for use on board aircraft while operating international services, no duties and charges, including customs duties and inspection fees imposed in the Territory of



the first Party, shall be applied, even when these supplies are to be used on the parts of the journey performed over the Territory of the Party in which they are taken on board. The articles referred to above may be required to be kept under customs supervision and control. The provisions of this paragraph cannot be interpreted in such a way that a Party can be made subject to the obligation to refund customs duties which already have been levied on the items referred to in the above mentioned article.

3. The exemptions granted by this Article shall apply to the items referred to in paragraph 1 of this Article:

- a. introduced into the Territory of the Party by or on behalf of the Designated Airline of the other Party;
- b. retained on board aircraft of the Designated Airline of one Party upon arrival in or leaving the Territory of the other Party; or
- c. taken on board aircraft of the Designated Airline of one Party in the Territory of the other Party and intended for use in operating the Agreed Services;

whether or not such items are used or consumed wholly within the Territory of the Party granting the exemption, provided the ownership of such items is not transferred in the Territory of the said Party.

4. Regular airborne equipment, spare parts, supplies fuels and lubricants and aircraft stores retained on board the aircraft of either Party may be unloaded in the Territory of the other Party only with the approval of the customs authorities of that Party, who may require that materials be



placed under their supervision up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

#### **Article 10 Taxation**

The revenues earned by an airline designated by a Contracting Party in connection with the operation of aircraft in international traffic shall be taxable only in the State in which the headquarters and principal place of business of the designated airline is located.

#### **Article 11 Transfer of funds**

Each Contracting Party grants to the designated airline(s) of the other Contracting Party the right of free transfer in any freely convertible currencies in accordance with the foreign exchange regulations in force of the excess of receipts over expenditure earned by that airline(s) in its territory in connection with the carriage of passengers, mail and cargo.

#### **Article 12 Application of Laws**

1. While entering, within or leaving the Territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's Designated Airlines.
2. While entering, within or leaving the Territory of one Party, its laws and regulations relating to the admission to or departure from its Territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and





quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's Designated Airlines.

3. Neither Party shall give preference to its own or any other Airline over an Airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.
4. Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

### **Article 13 Safety**

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses are at least equal to the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above or landing within its own Territory, certificates of competency and licenses granted to or validated for its own nationals by the other Party.
2. Each Party may request consultations, in conformity with Article 17 (Consultations), concerning the safety standards maintained by the other



Party relating to aeronautical facilities, aircrew, aircraft and the operation of the Airlines.

3. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in the areas referred to in paragraph 2 that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action within an agreed time period. Each Party reserves the right to withhold, revoke, suspend, or impose conditions on the operations authorization of an Airline or Airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.
4. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of a Designated Airline of one Party, on service to or from the Territory of another party, may, while within the Territory of the other Party be the subject of a ramp inspection by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this inspection is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the standards established at that time pursuant to the Convention.



5. When urgent action is essential to ensure the safety of an Airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of a Designated Airline or Airlines of the other Party.
6. Any action by one Party in accordance with paragraph 5 above shall be discontinued once the basis for the taking of that action ceases to exist.
7. With reference to paragraph 3 above, if it is determined that one Party remains in non-compliance with International Civil Aviation Organization (ICAO) standards when the agreed time period has elapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.

#### **Article 14** **Aviation Security**

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety



of Civil Aviation, done at Montreal on September 23, 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on February 24, 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on March 1, 1991, as well as with any other convention or protocol relating to the security of civil aviation which both Parties adhere to.

2. Each Party 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, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.
3. Each Party shall, in its mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; it shall require that operators of aircraft of its registry or operators of aircraft who are established in its Territory, and the operators of airports in its Territory act in conformity with such aviation security provisions. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes referred to in this paragraph. Each Party may request immediate consultations with the other Party at any time to discuss any such differences.
4. Each Party agrees that such operators of aircraft may be required to observe the security provisions referred to in paragraph 3 above required by the other Party for entry into, for departure from, and while within the





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

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.
6. Each Party shall have the right, within sixty (60) days following notice, for its Aeronautical Authorities to conduct an assessment in the Territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the Territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the Aeronautical Authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.
7. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the Aeronautical Authorities of that Party may request immediate consultations with the Aeronautical Authorities of the other Party. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within



fifteen (15) days from the date of such request shall constitute grounds to withhold, revoke, suspend, or impose conditions on the operating authorization of a Designated Airline or Airlines of that Party. When required by an emergency, or to prevent further non-compliance with the provisions of this Article, a Party may take interim action at any time to the expiry of fifteen (15) days.

### **Article 15**

#### **Approval of Schedules**

1. The Designated Airline(s) of each Party shall submit its envisaged flight schedules for approval to the Aeronautical Authorities of the other Party at least thirty (30) days prior to the operation of the Agreed Services. The same shall apply to any modification thereof.
2. For supplementary flights which the Designated Airline of one Party wishes to operate on the Agreed Services outside the approved timetable, that Airline must request prior permission from the Aeronautical Authorities of the other Party. Such requests shall be submitted at least fifteen (15) days prior to the operation of such flights.

### **Article 16**

#### **Statistics**

The Aeronautical Authorities of each Party shall provide the Aeronautical Authorities of the other Party, upon request, periodic or other statements of statistics as may be reasonably required.



## **Article 17 Consultations**

Either Party may, at any time, request consultations in writing relating to the interpretation, application, implementation, or amendment of, or compliance with this Agreement or its Annexes. Such consultations shall begin at the earliest possible date, but not later than sixty (60) days from the date the other Party receives the request, unless otherwise agreed.

## **Article 18 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 in the first place endeavor to settle it by negotiation.
2. If the Parties fail to reach a settlement within sixty (60) days by negotiation, the dispute shall be settled through diplomatic channel.
3. If the Contracting Parties fail to reach a settlement by diplomatic channel within sixty (60) days, either Party may refer the dispute 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 by such a tribunal 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 International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case may be within a period of thirty (30) days. In each case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

4. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules and shall determine the place of arbitration having regard to the circumstances of the case. The tribunal, once formed, may recommend interim relief measure pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
5. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.
6. Each Contracting Party shall be responsible for the cost of its designated arbitrator and subsidiary staff provided and both Contracting Parties shall share equally all such further expenses involved in the activities of the tribunal, including those of the President.





## **Article 19 Amendment**

1. Any amendment to the present Agreement agreed upon by the Parties shall come into force on the date on which the Parties have informed each other in writing, through diplomatic channels, of the completion of their respective constitutional requirements.
2. Notwithstanding the provisions of paragraph 1 above, any amendment of the Annex to this Agreement shall be agreed upon between the Aeronautical Authorities, through an exchange of diplomatic notes and shall take effect on a date to be determined in the notes.

## **Article 20 Multilateral Agreements**

If a general multilateral air transport agreement comes into force in respect of both Parties, the provisions of such agreement shall prevail. Consultations in accordance with Article 17 (Consultations) of this Agreement may be held with a view to determining the extent to which this Agreement is affected by the provisions of the multilateral agreement.

## **Article 21 Termination**

1. Either Party may at any time give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to ICAO.





2. The Agreement shall terminate one (1) year after the date of receipt of the notice by the other Party, unless the notice to terminate is withdrawn by mutual consent before the expiry of this period. In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) working days after the receipt of the notice by ICAO.

**Article 22**  
**Registration with ICAO**

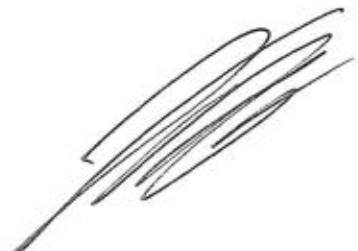
This Agreement and any amendments thereto shall be registered with the ICAO.

**Article 23**  
**Entire Agreement and Variation**

This Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings whether written or oral appertaining to the subject matter of this Agreement and may not be varied except by an instrument or document in writing signed by the parties to this Agreement.

**Article 24**  
**Entry into force**

This Agreement shall enter into force on the date on which both Contracting Parties have notified each other in writing through the diplomatic channel, of their compliance with the constitutional requirements necessary for the implementation thereof. The date of entry into force shall be the date of the last notification.





IN WITNESS WHEREOF the undersigned being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_ in two original copies in the English language.

FOR THE GOVERNMENT  
OF THE REPUBLIC OF KENYA

FOR THE GOVERNMENT OF  
THE UNITED REPUBLIC OF  
TANZANIA





**Annex**  
**Route Schedule**

1. Routes to be operated by the Designated Airline(s) of Kenya:

Points of Departure	Intermediate points	Points of Destination	Points Beyond
Any points in Kenya	Any points within Africa	Dar es Salaam/Kilimanjaro/Zanzibar/ one other Point	Any points within Africa

For all-cargo service, between Tanzania and any point or points.

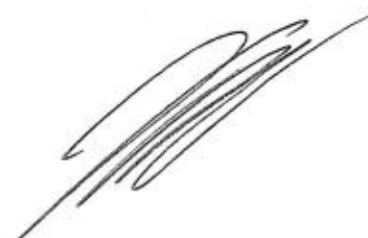
2. Routes to be operated by the Designated Airline(s) of Tanzania:

Points of Departure	Intermediate points	Points of Destination	Points Beyond
Any points in Tanzania	Any points within Africa	Nairobi/Mombasa/Kisumu and one other point	Any points within Africa

For all-cargo service, between Kenya and any point or points.

3. While operating an Agreed Service on a specified route, the Designated Airline(s) may on any or all flights and at the option of each Airline:

- a. operate flights in either or both directions;
- b. combine different flight numbers within one aircraft operation;







- c. omit stops at any point or points, provided that services begin or end at a point in the Territory of the Party designating the Airline;
  - d. transfer traffic from any of its aircraft to any of its other aircraft at any points on the routes; and
  - e. exercise full third and fourth freedom traffic rights.
4. The exercise of fifth freedom traffic rights will be considered by the aeronautical authorities of both Parties on a case-by-case basis.



**AIR SERVICES AGREEMENT**

**BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KENYA  
AND THE AUSTRIAN FEDERAL GOVERNMENT**

The Government of Kenya and the Austrian Federal Government, hereinafter referred to as "the Contracting Parties", being Parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944;

Desiring to organize, in a safe and orderly manner, international air services and to promote in the greatest possible measure international cooperation in respect of such services; and

Desiring to establish an Agreement to foster the development of scheduled air services between and beyond their territories,

Have agreed as follows:

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## ARTICLE 1

### DEFINITIONS

For the purpose of the present Agreement:

- a) The term "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, including any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 (a) thereof, so far as those Annexes and amendments are applicable for both Contracting Parties;
- b) The term "aeronautical authorities" means, in the case of the Government of Kenya and in the case of the Austrian Federal Government the Ministry for Transport, Innovation and Technology or, in both cases, any person or body authorized to perform any functions at present exercised by the said authorities or similar functions;
- c) The term "agreed services" means scheduled international air services on the route(s) specified in the Annex to this Agreement for the transport of passengers, baggage, cargo and mail;
- d) The term "designated airline" means any airline, which has been designated and authorised in accordance with Article 3 of the present Agreement;
- e) The term "territory" has the meaning assigned to it in Article 2 of the Convention;
- f) The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings assigned to them in Article 96 of the Convention;
- g) The term "specified route" means a route specified in the Annex to this Agreement.
- h) The term "capacity" in relation to agreed services means the available payload of the aircraft used on such services, multiplied by the frequency operated by such aircraft over a given period on a route or section of a route.
- i) The term "tariff" means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including commission charges

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and other additional remuneration for agency or sale of transportation documents, but excluding remuneration and conditions for the carriage of mail; and

- j) The term "Annex" means the Annex to this Agreement as amended. The Annex forms an integral part of the Agreement and all references to the Agreement shall include reference to the Annex except where otherwise provided.
- k) References in this Agreement to nationals of the Republic of Austria shall be understood as referring to nationals of European Union Member States.
- l) References in this Agreement to airlines of the Republic of Austria shall be understood as referring to airlines designated by the Republic of Austria.
- m) References in this Agreement to the "EU Treaties" shall be understood as referring to the Treaty on European Union and the Treaty on the functioning of the European Union.

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## 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 scheduled international air services on the routes specified in the Annex to this Agreement.
- 2) Subject to the provisions of this Agreement the airlines designated by each Contracting Party shall enjoy, while operating the agreed services on the specified routes, the following rights:
  - a) The right to fly across its territory without landing, and
  - b) The right to make stops in its territory for non-traffic purposes.
  - c) The right to make stops in the territory of the other Contracting Party at the points specified in the Annex for the purpose of taking on board and disembarking passengers, baggage, cargo including mail, separately or in combination, destined for or coming from point(s) in the territory of the first Contracting Party.
- 3) Nothing in paragraph (2) shall be deemed to confer on the airlines designated by one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, baggage and cargo including mail for remuneration or hire and destined for another point in the territory of that other Contracting Party.

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**ARTICLE 3**  
**Designation and Revocation**

**Designation and Authorization**

1. Either Contracting Party shall have the right to designate, by written notification through diplomatic channels to the other Contracting Party, one or more Airline(s) for the purpose of operating the Agreed Services on the Specified Routes and to withdraw the designation of any Airline or to substitute another Airline for one previously designated.
2. Upon receipt of such a notification, 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, provided that:
  - a. in the case an Airline is designated by the Republic of Austria:
    - i. the Airline is established in the Territory of the Republic of Austria 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 European Union 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 an Airline is designated by the Republic of Kenya:

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- i. the Airline is established in the Territory of the Republic of Kenya and has a valid Operating Licence in accordance with applicable law of the Republic of Kenya; and
- ii. effective regulatory control of the Airline is exercised and maintained by the Republic of Kenya responsible for issuing its Air Operator's Certificate; and
- iii. the Airline is owned, directly or through majority ownership, and it is effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya,

and that:

- c. the Government designating the Airline is maintaining and administering the standards set forth in Articles on Fair Competition, Safety and Aviation Security; and
  - d. the Designated Airline(s) is/are qualified to meet the conditions prescribed under the laws and regulations normally applied to the operations of International Air Services 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(s) 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.
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 fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operations of international Air Services.

#### Revocation and Suspension of Authorization

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5. Either Contracting Party may revoke, withhold, suspend or limit the operating authorization or technical permissions of an airline designated by the other Contracting Party where:
- a. in the case an Airline is designated by the Republic of Austria:
    - i. the Airline is not established in the Territory of the Republic of Austria 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 European Union 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 an Airline is designated by the Republic of Kenya:
    - i. the Airline is not established in the Territory of the Republic of Kenya or has no valid operating licence in accordance with applicable law of the Republic of Kenya; or
    - ii. effective regulatory control of the Airline is not exercised or not maintained by the Republic of Kenya or Kenya is not responsible for issuing its Air Operator's Certificate; or
    - iii. the Airline is not owned, directly or through majority ownership, or is not effectively controlled by the Republic of Kenya and/or by nationals of the Republic of Kenya,
  - c. in case the other Contracting Party is not maintaining and administering the standards set forth in Articles on Fair Competition, Safety and Aviation Security;

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- d. 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;
6. Unless immediate action is essential to prevent further non-compliance with the conditions as referred to in 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 the confirmation of receipt of the request.
7. This Article does not limit the rights of either Contracting Party to withhold, suspend, revoke, limit or impose conditions on the operating authorization of an Airline or Airlines of the other Contracting Party in accordance with the provisions of Articles on Fair Competition, Safety and Aviation Security of this Agreement.

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## ARTICLE 4

### APPLICABILITY OF LAWS AND REGULATIONS

- 1) The laws and regulations of one Contracting Party shall apply to the navigation and operation of the aircraft of the airlines designated by the other Contracting Party during entry into, flying over, stay in and departure from the territory of the first Contracting Party.
- 2) The laws and regulations of one Contracting Party governing entry into, stay in and departure from its territory of passengers, crew, cargo or mail such as formalities regarding entry, exit, emigration, immigration, customs, health and quarantine shall apply to passengers, crew, cargo and mail carried by aircraft of the airlines designated by the other Contracting Party whilst they are within the said territory.
- 3) In pursuance of Annex 9 of the Convention, each Contracting Party shall take appropriate measures in order to ensure that only passengers with valid and authentic travel documents which are required for the entry in or transit through the territory of the other Contracting Party are carried.
- 4) If a Contracting Party observes a substantial increase of illegal migration or other threats to its internal security as a consequence of the application of this Agreement, in pursuance of Annex 9 of the Convention, the other Contracting Party shall allow the deployment of document advisers by the Contracting party or by the air carrier of each Party. If the deployment of document advisers turns out not to be sufficient the concerned Contracting Party may take appropriate measures.
- 5) Each Contracting Party shall, upon request, supply to the other Contracting Party copies of the relevant laws and regulations referred to in this Article.

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## ARTICLE 5

### EXEMPTION FROM CUSTOMS AND OTHER DUTIES

- 1) Aircraft operated on international services by the airline(s) designated by each Contracting Party, as well as their regular equipment, supplies of fuel and lubricants and the 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 and supplies remain on board the aircraft up to such time as they are re-exported.
- 2) In addition, the following shall also be exempt from the same duties and taxes with the exception of charges corresponding to the service performed:
  - a) aircraft stores taken on board in the territory of either Contracting Party, within limits fixed by the appropriate authorities of said Contracting Party, and for use on board the aircraft engaged on a specified route of the other Contracting Party;
  - b) spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on a specified route by the designated airline(s) of the other Contracting Party;
  - c) fuel and lubricants destined to supply aircraft operated on a specified route by the designated airline(s) of the other Contracting Party, even if these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board.

Materials referred to in sub-paragraphs (a), (b) and (c) of this paragraph may be required to be kept under customs supervision or control.

- 3) 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 the customs authorities of that Contracting Party. In such case, they 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.

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## ARTICLE 6

### TAXATION

- 1) Profits from the operation of aircraft in international traffic shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
- 2) Capital represented by aircraft operated in international traffic and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Contracting Party in which the place of effective management of the enterprise is situated.
- 3) Where a special Agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Contracting Parties, the provisions of the latter shall prevail.

## ARTICLE 7

### USER CHARGES

- 1) Each Contracting Party shall not impose or permit to be imposed on the airlines designated by the other Contracting Party user charges higher than those imposed on its own airlines operating similar international services.
- 2) Those charges shall not be higher than the charges imposed upon aircraft of the designated airlines of each Contracting Party engaged in similar international services.
- 3) Such charges shall be just and reasonable and shall be based on sound economic principles.

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## ARTICLE 8

### TRAFFIC IN DIRECT TRANSIT

Passengers, baggage and cargo including mail in direct transit across the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall, except in respect of security measures against the threat of unlawful interference, such as violence and air piracy and occasional measures for the combat of illicit drug traffic, be subject to no more than a simplified control. Baggage, cargo and mail in direct transit shall be exempt from custom duties, charges and other similar taxes.

## ARTICLE 9

### RECOGNITION OF CERTIFICATES AND LICENCES

- 1) Certificates of airworthiness, certificates of competency and licences issued or validated in accordance with the laws and regulations of one Contracting Party, including, in the case of the Republic of Austria, European Union laws and regulations, and unexpired shall be recognised as valid by the other Contracting Party for the purpose of operating the agreed services, provided always that such certificates or licences were issued or validated, equal or above the minimum standards established under the Chicago Convention.
- 2) Paragraph 1) also applies with respect to an airline designated by the Austrian Federal Government whose regulatory control is exercised and maintained by another European Union Member State.
- 3) Each Contracting Party, however, reserves the right to refuse to recognize, for flights above its own territory, certificates of competency and licences granted or validated to its own nationals by the other Contracting Party or by any other State.

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## ARTICLE 10

### TARIFFS

1) Each Contracting Party shall allow tariffs for scheduled air services to be established by each airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

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

2) Tariffs for scheduled international air services between the territories of the Contracting Parties shall not be required to be filed. Notwithstanding the foregoing, the airlines of the Contracting Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed tariffs to the aeronautical authorities of the Contracting Parties in a manner and format acceptable to those aeronautical authorities.

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## ARTICLE 11

### COMMERCIAL REPRESENTATION AND ACTIVITIES

- 1) The airlines designated by each Contracting Party shall be allowed:
  - a) To establish in the territory of the other Contracting Party offices for the promotion of air transportation and sale of air tickets as well as, in accordance with the legislation of such other Contracting Party, other facilities required for the provision of air transportation;
  - b) To bring in and maintain in the territory of the other Contracting Party – in accordance with the legislation of such other Contracting Party relating to entry, residence and employment – managerial, sales, technical, operational and other specialist staff required for the provision of air transportation; and
  - c) In the territory of the other Contracting Party to engage directly and, at the airlines discretion, through its agents in the sale of air transportation.
- 2) The competent authorities of each Contracting Party will take all necessary steps to ensure that the representation of the airlines designated by the other Contracting Party may exercise their activities in an orderly manner.
- 3) The airlines designated by each Contracting Party shall have the right to sell, in the territory of the other Contracting Party, air transportation and any person shall be free to purchase such transportation in the currency of that territory or in freely convertible currencies of other countries in accordance with the foreign exchange regulations in force.

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## ARTICLE 12

### COMMERCIAL OPPORTUNITIES

#### 1. Ground Handling

Each designated airline shall have the right to provide its own ground handling services ("self-handling") in the territory of the other Contracting Party or otherwise to contract these services out ("third party-handling"), in full or in part, at its option, with any of the suppliers authorized for the provision of such services. Where or as long as the laws and regulations applicable to ground handling in the territory of one Contracting Party prevent or limit either the freedom to contract these services out or self-handling, 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.

"Self-handling" means a situation in which the airport user directly provides for himself one more categories of ground handling services and concludes no contract of any description with a third party for the provision of such services; for the purpose of this definition, among themselves airport users shall not be deemed to be third parties where:

- a) one holds the majority in the other, or
- b) a single body has a majority holding in each.

#### 2. Code – Share

In operating or holding out services under this Agreement, any air carrier of a Party may enter into cooperative marketing arrangements, such as blocked-space agreements or code-sharing arrangements, with:

- a) any air carrier or carriers of the Parties; and
- b) any air carrier or carriers of a third country; and

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c) any surface (land or maritime) transport provider;

provided that (i) the operating carrier holds the appropriate traffic rights and (ii) the marketing carriers hold the appropriate underlying route rights and (iii) the arrangements meet the requirements relating to safety and competition normally applied to such arrangements. In respect of passenger transport sold involving code-shares, the purchaser shall be informed at the point of sale, or in any case before boarding, which transport providers will operate each sector of the service.

### 3. Leasing Arrangements

The designated airlines of each Contracting Party shall have the right to perform the agreed services on the specified routes using aircraft (or aircraft and crew) leased from any company, including other airlines, subject to being authorized to use the aircraft (or aircraft and crew) on such basis by the Aeronautical Authorities of both Contracting Parties.

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## ARTICLE 13

### CONVERSION AND TRANSFER OF REVENUES

Each Contracting Party shall grant to the designated airlines of the other Contracting Party the right to freely transfer to its home territory the excess sums of receipts over expenditures in accordance with the foreign exchange regulation in force, in territory of which receipts are earned. The conversion of receipts of the designated airlines of one Contracting Party into local currency of the other Contracting Party shall be done in accordance with the foreign exchange regulation in force.

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## ARTICLE 14

### FAIR COMPETITION AND STATE AID

- 1) Each Contracting Party shall allow fair and equal opportunity for the designated airlines of both Contracting Parties to compete in providing the international air transport governed by this Agreement.
- 2) Each Contracting Party shall allow each designated airline to determine the frequency and capacity of the international air transport it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines designated by 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.
- 3) Airlines designated by a Contracting Party may be required to submit their flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of their introduction. The same procedure shall apply to any modification thereof. In special cases this time limit may be reduced subject to the consent of the said authorities.
- 4) The designated airline of either Contracting Party in conjunction with any other airline or airlines or separately shall not
  - a) abuse dominant market power, for example through capacity dumping or charging fares and rates at levels which are, in the aggregate, insufficient to cover the costs providing the services to which they relate in a way which has or is likely or intended to have the effect of severely weakening a competitor or excluding a competitor from a route, or
  - b) having agreements, decisions or concerted practices which have as their objective or effect the prevention, restriction or distortion of competition.
- 5) Neither Contracting Party shall provide or permit state subsidy or support for or to its designated airline or airlines in such way that would adversely affect the fair and equal

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opportunity of the airlines of the other Contracting Party to compete in providing international air transportation.

6) State subsidy or support means the provision of support on a discriminatory basis to a designated airline, directly or indirectly, by the state or by a public or private body designated or controlled by the state. Without limitation, it may include the setting-off of operational losses; the provision of capital, non-refundable grants or loans on privileged terms; the granting of financial advantages by forgoing profits or the recovery of sums due; the forgoing of a normal return on public funds used; tax exemptions; compensation for financial burdens imposed by the public authorities; or discriminatory access to airport facilities, fuels or other reasonable facilities necessary for the normal operation of air services.

7) Where a Contracting Party provides state subsidy or support to a designated airline in respect of services operated under this Agreement, it shall require that airline to identify the subsidy or support clearly and separately in its accounts.

8) If one Contracting Party has substantiated concerns that its designated airlines are being subjected to discrimination or unfair practices, or that a subsidy or support being considered or provided by the other Contracting Party would adversely affect or is adversely affecting the fair and equal opportunity of the airlines of the first Contracting Party to compete in providing international air transportation, it shall have the right to request consultations in accordance with Article 19 (on Consultations) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultations shall begin within 30 days of the request. If the Contracting Parties fail to reach a resolution of the matter through consultations within 30 days from the start of consultations or consultations did not start within a period of 30 days of receipt of the request, the Contracting Party which requested the consultations shall have the right to suspend the exercise of the rights specified in Article 2 of the present agreement by the airline designated by the other Contracting Party, or to revoke the operating authorization, or to impose such conditions as it may deem necessary on the exercise of these rights.

9) The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this agreement and shall identify the authorities responsible for their implementation.

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## ARTICLE 15

### 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 paragraph (5) of Article 3 (designation and revocation) of this Agreement.
- 3) Notwithstanding the obligations mentioned in Article 33 of the Convention it is agreed that any aircraft operated by the designated airlines of one Contracting Party on services to or from the territory of the other Contracting 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.

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- 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 licences 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 or on behalf of the airline or airlines of one Contracting Party in accordance with paragraph (3) of this Article is denied by a 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) of this Article 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, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of the 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.

8) Where the Republic of Austria has designated an airline whose regulatory control is exercised and maintained by an European Union Member State, the rights of the other Contracting Party under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that other European Union Member State and in respect of the operating authorisation of that airline.

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## ARTICLE 16

### SECURITY

- 1) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement.
- 2) The Contracting Parties shall in particular act in conformity with the provisions of:
  - a) The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
  - b) The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
  - c) The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
  - d) The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988;
  - e) The Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991,

and any other multilateral agreement governing aviation security binding upon both Contracting Parties.

- 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 Chicago Convention to the extent that such security provisions are applicable to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft which have their principal place of business or permanent residence in the territory of the Contracting Parties or, in the case of the Republic of Austria, operators of aircraft which are established in its territory under the EU Treaties and have valid

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Operating Licences in accordance with European Union law, and the operators of airports in their territory act in conformity with such aviation security provisions.

4) 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.

5) Each Contracting Party agrees that its operators of aircraft shall be required to observe, for departure from or while within the territory of the other Contracting Party, aviation security provisions in conformity with the law in force in the country, including, in the case of the Austrian Republic, European Union law.

6) 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 and aircraft stores prior to and during boarding or loading.

7) 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.

8) 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, 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.

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9) When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within one (1) month of the date of such request shall constitute grounds for application of paragraph (5) of Article 3 of this Agreement (designation and revocation). If required by a serious emergency, either Contracting Party may take interim action prior to the expiry of a month period.

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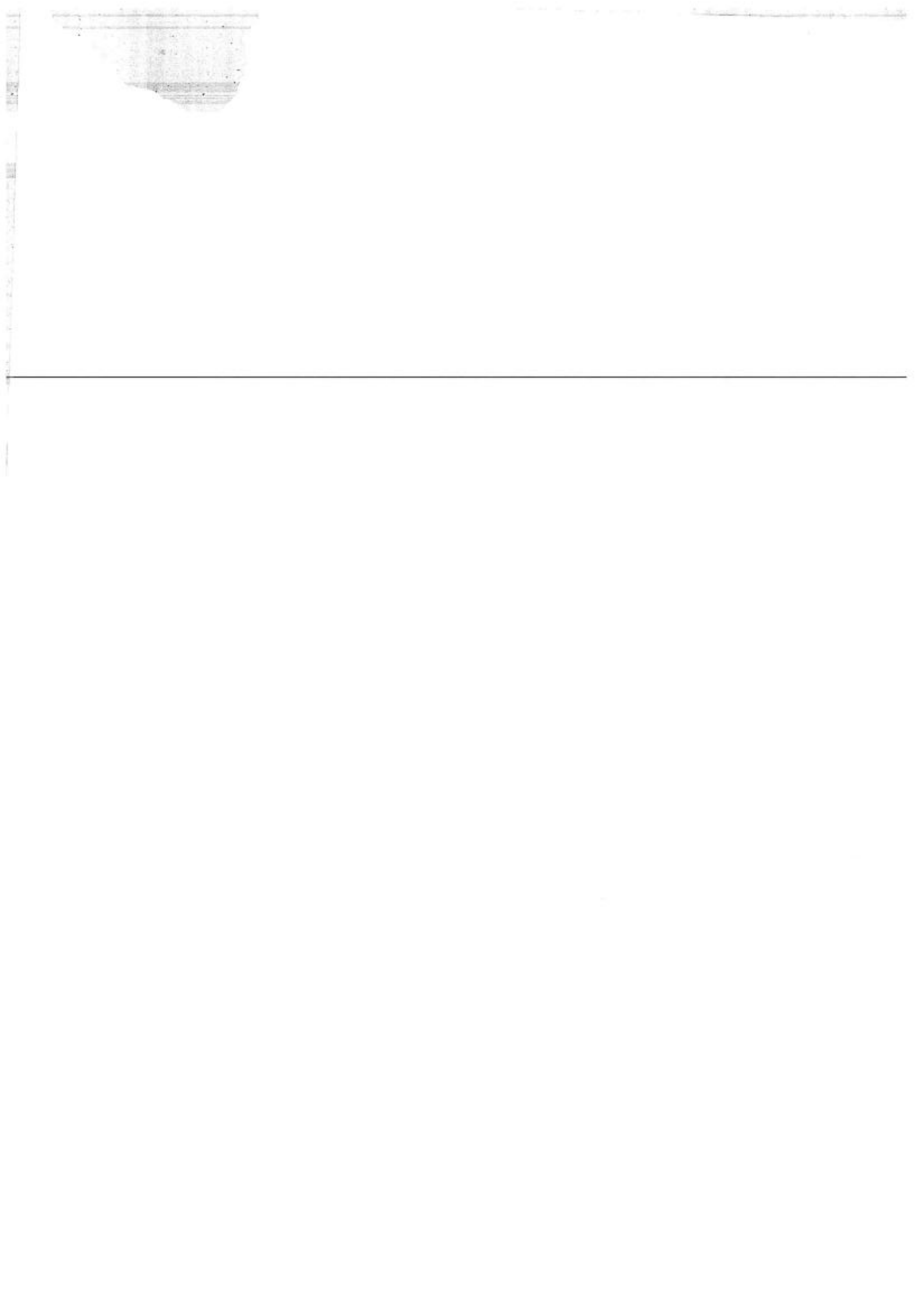
## ARTICLE 17

### PROVISION OF STATISTICS

The aeronautical authorities of one Contracting Party shall supply the aeronautical authorities of the other Contracting Party, at their request, with such statistics as may be reasonably required for information purposes subject to the laws and regulations of each Contracting Party.

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## ARTICLE 18

### CONSULTATIONS

- 1) The aeronautical authorities of each Contracting Party shall consult each other from time to time, in order to ensure close cooperation concerning all the issues related to the interpretation and application of this Agreement, on request of either Contracting Party.
- 2) Such consultations shall begin within a period of sixty (60) days from the date of request of one Contracting Party.

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## ARTICLE 19

### MODIFICATIONS

- 1) If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may at any time request consultations with the other Contracting Party. Such consultations (which may be prepared by discussions between the aeronautical authorities), shall begin within a period of sixty (60) days from the date of the request, unless both Contracting Parties agree to an extension of this period.
- 2) Modifications so agreed upon shall be approved by each Contracting Party and shall enter into force on the first day of the second month, following the month on which the two Contracting Parties have notified each other by an exchange of diplomatic notes that the requirements for its entry into force under their respective legal procedures have been fulfilled.
- 3) Modifications to the Annex of this Agreement may be agreed directly between the aeronautical authorities of the Contracting Parties and enter into force when confirmed by an exchange of diplomatic notes.

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## ARTICLE 20

### 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 in the first place endeavour to settle it by negotiation.
- 2) 2. If the Contracting Parties fail to reach a settlement 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.
- 3) 3. 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.
- 4) 4. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or the third arbitrator is not appointed within in 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 such case, the third arbitrator shall be a national of a third State and 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 appointments. The arbitral tribunal shall reach its decision by a majority of votes.
- 5) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.
- 6) If and as long as either Contracting Party fails to comply with any decision given under paragraph (2) of this Article, the other Contracting Party may limit, suspend or revoke any

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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.

7) The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph (4) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

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## ARTICLE 21

### TERMINATION

- 1) Each Contracting Party may, at any time, give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement. Such notice shall simultaneously be communicated to the International Civil Aviation Organisation.
- 2) In such 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 mutual 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 Organisation.

## ARTICLE 22

### REGISTRATION

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





## ARTICLE 23

### ENTRY INTO FORCE

This agreement shall enter into force on the first day of the second month that follows the month during which the two Contracting Parties have completed to notify each other by an exchange of diplomatic notes that the requirements for its entry into force under their respective legal procedures have been fulfilled.

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

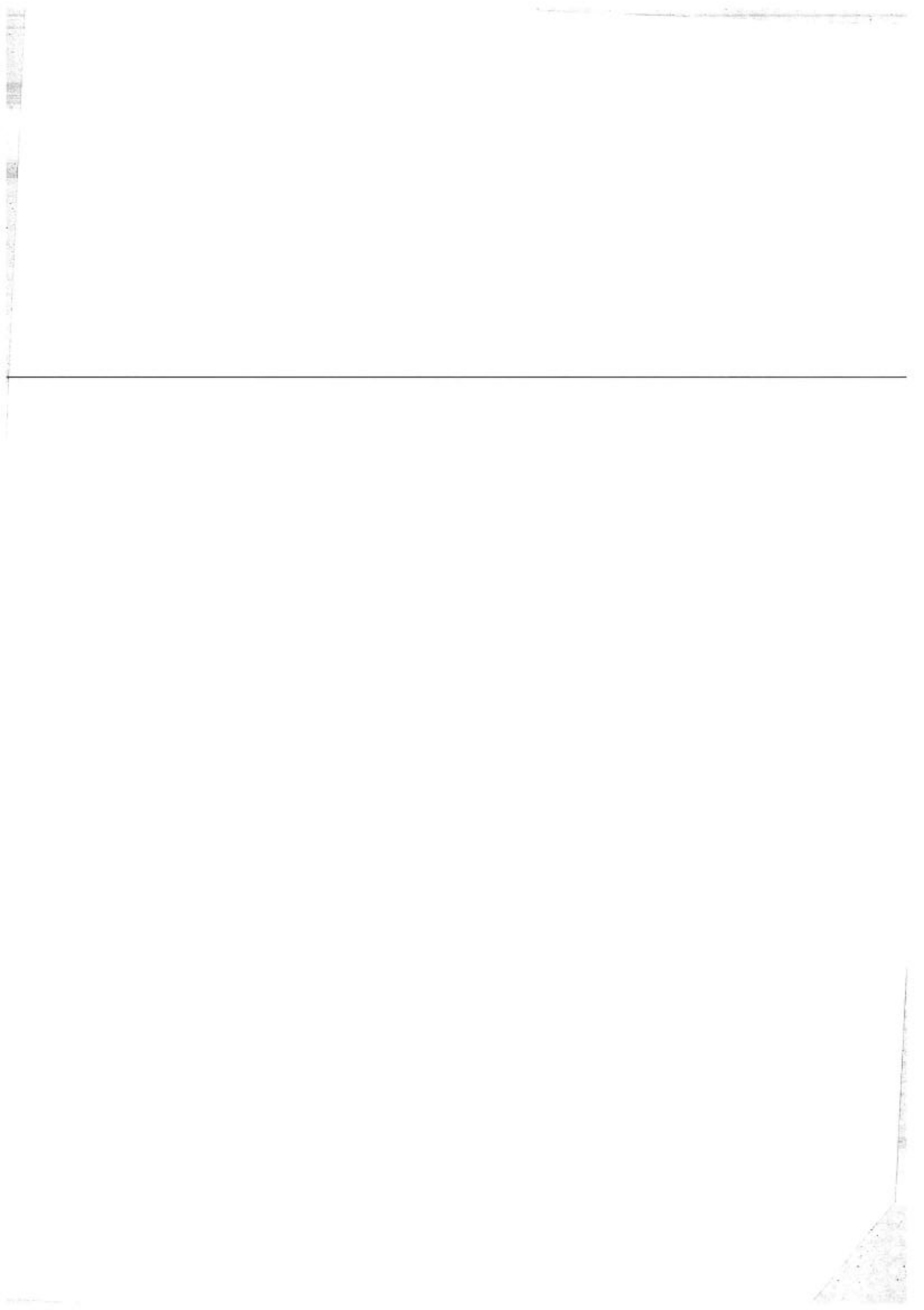
Done in duplicate at ..... this.....day of.....in the German and English languages, all texts being equally authentic. In the case of differences in interpretation of provisions of this Agreement the English text shall prevail.

FOR THE GOVERNMENT  
OF KENYA

FOR THE AUSTRIAN FEDERAL  
GOVERNMENT







## ANNEX

### Section I:

A. The airline(s) designated by Austria shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of Origin:	Intermediate points:	Points of Destination:	Points beyond:
Points in Austria	Any points	Points in Kenya	Any points

B. The airline(s) designated by Kenya shall be entitled to operate scheduled air services in both directions on routes specified hereafter:

Points of Origin:	Intermediate points:	Points of Destination:	Points beyond:
Points in Kenya	Any points	Points in Austria	Any points

### Section II:

Any intermediate points and points beyond may be served by the designated airline(s) of each Contracting Party without exercising Fifth Freedom traffic rights.

The exercise of Fifth Freedom traffic rights may be agreed upon by the aeronautical authorities of the two Contracting Parties.

### Section III:

The designated airline(s) of either Contracting Party may, on any or all flights, omit calling at any of the intermediate and/or beyond points, provided that the agreed services on this route start and terminate in the territory of that Contracting Party.

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## AIR SERVICES AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF BARBADOS

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### Preamble

The Government of the Republic of Kenya and The Government of Barbados (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 promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;

Desiring to facilitate the expansion of international air services opportunities;

Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;

Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options, and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.

Have agreed as follows:







## Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Government of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation; in the case of the Government of Barbados, the Minister responsible for Civil Aviation; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities.
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under the Agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "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;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement as an airline which is to operate international air services on the routes specified in accordance with the Route Schedule in the Annex to this Agreement;
- g) "domestic air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in a State's territory are destined to another point in that same State's territory;
- h) "ICAO" means the International Civil Aviation Organization;
- i) "international air transportation" is air transportation in which passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State;





j) "Contracting Party" is a State which has formally agreed to be bound by this Agreement;

k) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

l) "territory" in relation to a State have the meaning assigned to it in Article 2 of the Convention;

m) "user charges" 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; and

n) "air service", "international air service", "airline", and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention;

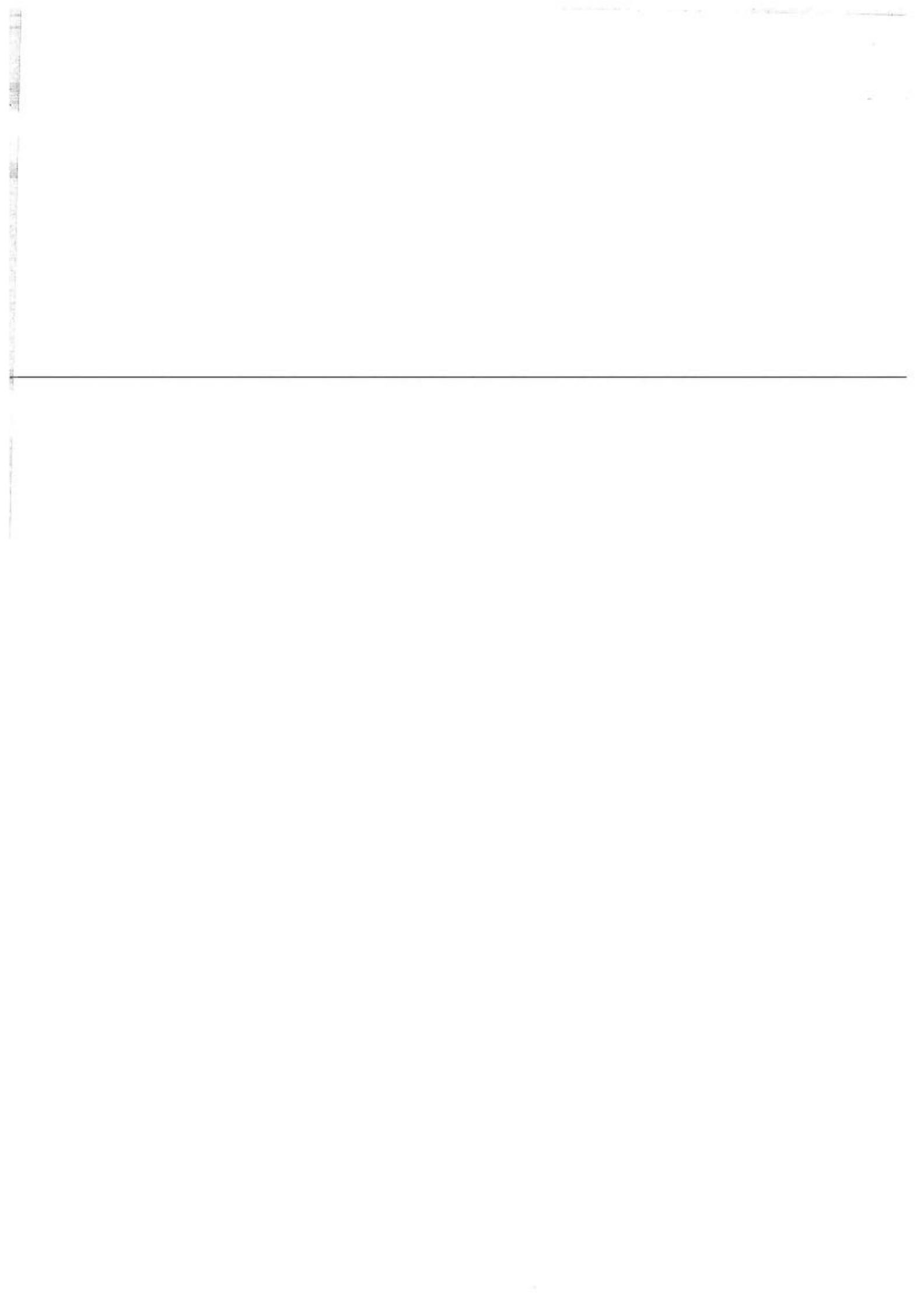
o) "Caribbean Community" means the Community of States established under Article 2 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy and the term "Caribbean Community Member State" means a State that is a member of the Caribbean Community.

p) "Agreed Services" means scheduled International Air Services between and beyond the respective territories of Barbados and Kenya for the transport of passengers, baggage and cargo, separately or in any combination;

In implementing this Agreement, the Contracting Parties shall act in conformity with the provisions of the Convention insofar as those provisions are applicable to International Air Services.

## 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 in the Annex to this Agreement;





2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:

- a) the right to fly without landing across the territory of the other Party;
- b) the right to make stops in the territory of the other Party for non-traffic purposes; and
- 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 and mail separately or in combination.

3. The airlines of each Contracting Party, other than those designated under Article 3 of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.

4. Nothing in this Article shall be deemed to confer on the designated airline(s) of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers, cargo and mail for remuneration or hire and destined for another point in the territory of the other Party.

### Article 3

#### Designation and Authorization


1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airline(s) to operate the agreed services in accordance with this Agreement and to withdraw or alter such designations.

2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization, each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:

(a) In the case of an airline designated by Barbados:

i) the airline is established in the territory of a Caribbean Community Member State and has a valid operating License in accordance with the applicable laws of Barbados and if necessary, a Caribbean Community Member State; and

ii) effective regulatory control of the airline is exercised and maintained by the Caribbean Community 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 and shall continue to be owned directly or through majority ownership by a Caribbean Community Member State and/or nationals of Caribbean Community Member States, and shall at all times be effectively controlled by such State and/or such nationals.

(b) In the case of an airline designated by Kenya:

i) the airline is established in the territory of Kenya and has a valid operating License in accordance with the applicable laws of Kenya: and

ii) Kenya has and maintains effective regulatory control of the airline; and

iii) the airline is owned and shall continue to be owned directly or through majority ownership by Kenya and/or nationals of Kenya.



And

(c) the Contracting Party designating the airline is in compliance with the provisions set forth in Article 8 (Safety) and Article 9 (Aviation Security); and

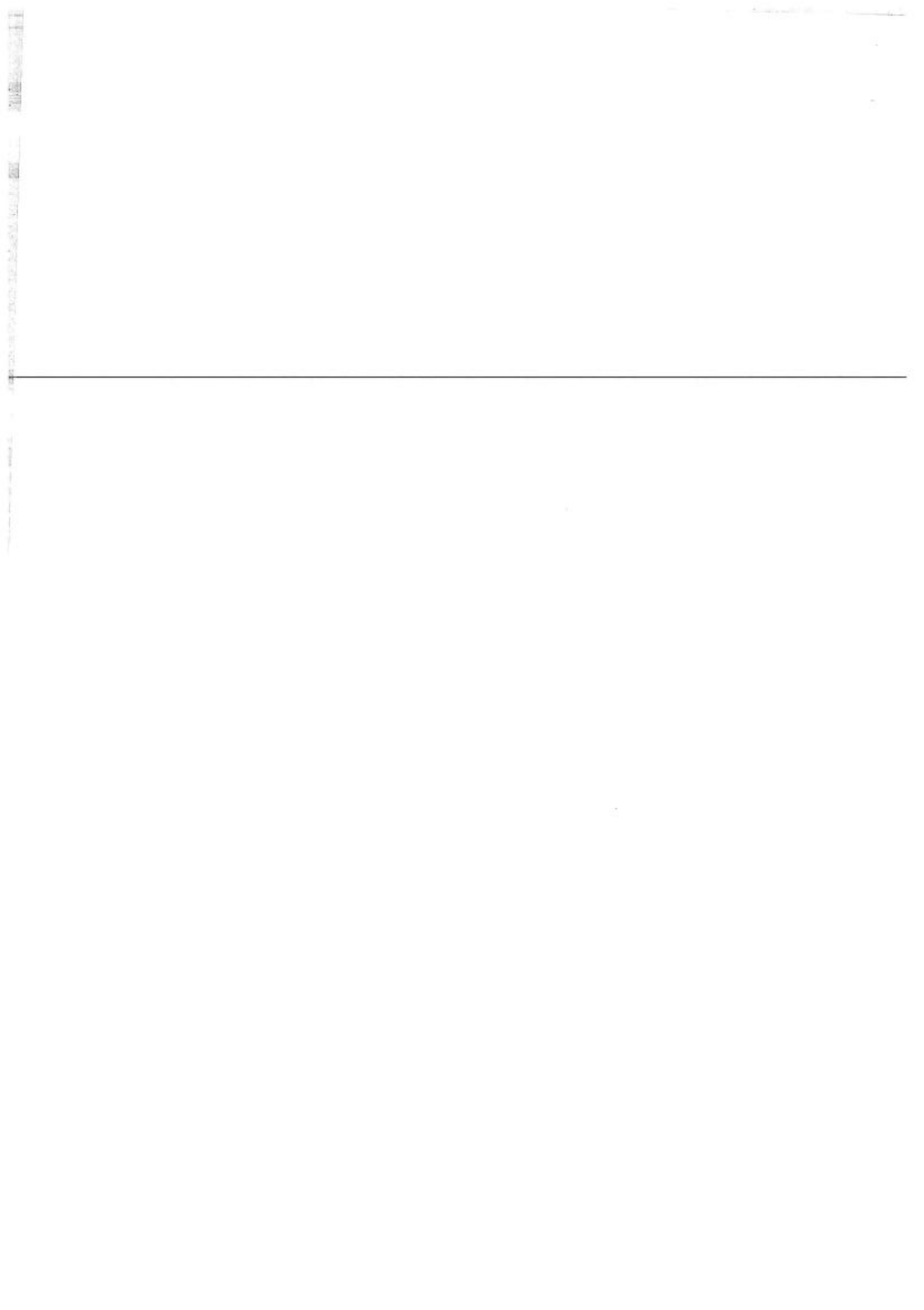
(d) the designated airline meets other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.

3. On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.

4. Either Contracting Party shall have the right to replace, subject to the provisions of paragraphs 1 and 2 above, an airline it has designated with another airline. The newly designated airline shall have the same rights and be subject to the same obligations as the airline which it replaces.







**Article 4**  
**Suspension, Revocation and Limitation of Authorization**

1. The aeronautical authorities of each Contracting Party shall have the right to suspend, revoke or limit the operating authorization referred to in Article 3 of this Agreement for international air services or technical permissions granted to a designated airline of the other Contracting Party, temporarily or permanent where:

(a) In the case of an airline designated by Barbados:

- i. the airline is not established in the territory of a Member State of the Caribbean Community or does not have a valid Operating License in accordance with the applicable laws of Barbados and if necessary, a Member State of the Caribbean Community; or
- ii. effective regulatory control of the airline is not exercised or not maintained by the Caribbean Community 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 and effectively controlled directly or through majority ownership by a Caribbean Community Member State and/or by nationals of Caribbean Community Member States.

(b) In the case of an airline designated by Kenya:

- i. the airline is not established in the territory of Kenya and does not have a valid Operating License in accordance with the applicable laws of Kenya; and
- ii. Kenya is not maintaining effective regulatory control of the airline; and
- iii. the airline is not owned and effectively controlled directly or through majority ownership by Kenya and/or nationals of Kenya.

or

(c) The airline is unable to satisfy the aeronautical authorities of the Contracting Party receiving the designation 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 aeronautical authorities in conformity with the Convention; or





- (d) The Contracting Party designating the airline is not in compliance with Article 8 (Safety) and Article 9 (Aviation Security) of this Agreement; or
  - (e) The airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
2. Such suspension, revocation and limitation of the operating authorization for international air services shall be preceded by consultations as provided for in Article 22 of this Agreement, unless an immediate suspension of operations or immediate limitations are necessary to avoid further infringements of laws and regulations.

#### Article 5 Application of Laws

1. The laws and regulations of one Contracting Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Contracting Party.
2. The laws and regulations of one Contracting Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.
3. Neither Contracting Party shall give preference to its own or any other designated airline over a designated airline of the other Contracting Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.

#### Article 6 Direct Transit

Passengers, baggage, and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.





## Article 7

### Recognition of Certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid in accordance with the laws and regulations of one Contracting Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.
2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.
3. Each Contracting Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.

## Article 8

### Safety

1. Each Contracting Party may in writing request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that written request.
2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet at least the minimum Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within fifteen (15) days.
3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of designated airlines of one Party, on service to or from the





territory of another Contracting Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Contracting Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, the crew's fitness for service, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.

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 licences in respect of that aircraft or in respect of the crew of that aircraft and 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. When urgent action is essential to ensure the safety of a designated airline operation, each Contracting Party reserves the right to immediately suspend or vary the operating authorization of the designated airline or airlines of the other Contracting Party.

6. Any action by one Contracting Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.

7. With reference to paragraph 2, if it is determined that one Contracting Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.







## Article 9 Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the 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, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other Convention and Protocol relating to the security of civil aviation which both Contracting Parties adhere to.
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 ICAO and designated as Annexes to the Convention. Each Contracting Party shall require that airline(s) it has designated to operate the agreed services on the specified routes, and the operators of airports in its territory, act in conformity with such aviation security provisions. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Each Contracting Party may request immediate consultations with the other Contracting Party at any time to discuss any such differences.
4. Each Contracting Party agrees that such operators of aircraft may be required to observe the material aviation security provisions referred to in paragraph 3 above which the other Contracting Party has stipulated as required for entry into its territory. For entry into, departure from, or while within the territory of Barbados operators of aircraft shall be required to observe aviation security provisions in conformity with the law in force in that country. For entry into, departure from, or while within the territory of Kenya, operators of aircraft shall be required to observe aviation security provisions in conformity with the law of the Republic of Kenya. Each Contracting Party shall ensure that measures are effectively applied within its territory to protect aircraft and to screen





passengers, crew, checked and carryon baggage and to carry out appropriate security controls on baggage, cargo, mail and aircraft stores prior to and during boarding or loading. Each Contracting Party shall look favourably on any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

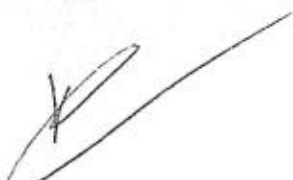
5. In the event of the unlawful seizure of a civil aircraft or other acts of unlawful interference with the safety of such aircraft, their passengers and crew, airports or air navigation facilities, or if such incident is threatened, the Contracting Parties shall, in mutual consultations, assist each other by facilitating telecommunications and other appropriate measures intended to terminate as rapidly and commensurate with minimum risk to life such incident or threat thereof.

6. Each Contracting Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Contracting Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Contracting Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request immediate consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the operating authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.

## Article 10 User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the designated airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the designated airlines of the other Party on terms not less favourable than the most favourable terms available to any other designated airline at the time the charges are assessed.






2. User charges imposed on the designated airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Contracting Party shall encourage consultations between the competent charging authorities or bodies in its territory and the designated airlines using the services and facilities, and shall encourage the competent authorities or bodies and the designated airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Contracting Party shall be held, in dispute resolution procedures pursuant to Article 23 (Settlement of Disputes), to be in breach of a provision of this Article, unless:



a) the Contracting Party fails to undertake a review of the charge or practice that is the subject of complaint by the other Contracting Party within a reasonable amount of time; or

b) following such a review the Contracting Party fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.

#### Article 11 Duties, Taxes and Fees

1. Each Contracting Party shall on the basis of reciprocity exempt a designated airline of the other Contracting Party to the fullest extent possible under its national laws, rules and regulations from import restrictions, customs duties, excise taxes, inspection fees and other national duties and charges on fuel, lubricants, consumable technical supplies, spare







parts including engines, regular aircraft equipment, aircraft stores and other items intended for use solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1:

a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of the other Contracting Party provided that such items may be required to be kept under customs supervision or control;

b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of the other Contracting Party; or

c) taken on board aircraft of the designated airline of one Contracting Party in the territory of the other Contracting Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.



3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Contracting Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they 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 12 Fair Competition

Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.

## Article 13 Tariffs

1. The tariffs charged by designated airlines shall not be required to be filed with, or approved by either Contracting Parties.







2. Notwithstanding paragraph 1 of this Article, either Contracting Party may require information of tariffs proposed by its own airline, or the designated airline(s) of the other Contracting Party for carriage to or from its territory.

3. Without limiting the application of general competition and consumer law prevailing in each Contracting Party, consultations in accordance with the provisions set forth in Article 22 (Consultations) of the present Agreement, may be initiated by either Contracting Party to:

- a) Prevent unreasonably discriminatory prices or practices;
- b) Protect consumers from tariffs that are unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practices among air carriers; and
- c) Protect designated airlines from tariffs that are artificially low because of direct or indirect subsidy or support.

#### Article 14

##### Currency Conversion and Remittance of Earnings

Each Contracting Party shall permit designated airline(s) of the other Party to convert and transmit abroad to the designated airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.

#### Article 15

##### Sale and Marketing of Air Service Products

- 1. Each Contracting Party shall accord designated airlines of the other Contracting Party the right to sell and market international air services and related products in its territory, either directly or through agents or other intermediaries of the designated airline's choice, including the right to establish offices, both on-line and off-line.
- 2. Each designated airline shall have the right to sell international air transport services in the currency of that territory or, at its discretion, in freely convertible currencies of





other countries, and any person shall be free to purchase such transportation in currencies accepted by that designated airline.

### Article 16 Code sharing/Cooperative Arrangements

1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or code sharing arrangements, with:

- a) an airline or airlines of either Party;
- b) an airline or airlines of a third country; and
- c) a surface transportation provider of any country,

provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements.

2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to code shared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:

- a) orally and, if possible, in writing at the time of booking;
- b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and
- c) orally again, by the airline's ground staff at all stages of the journey.

3 The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Parties at least thirty (30) days before its proposed introduction.





### Article 17 Aircraft Leasing



1. Either Contracting Party may prevent the use of leased aircraft for services under this Agreement which does not comply with Articles 8 (Safety) and 9 (Aviation Security).
2. Subject to paragraph 1 above, the designated airlines of each Contracting Party may use aircraft (or aircraft and crew) leased from any company, including other airlines, provided that this would not result in a lessor airline exercising traffic rights it does not have.

### Article 18 Ground Handling

1. 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.
2. The exercise of the rights set forth in paragraph (1) of this Article shall be subject only to physical and or operational constraints resulting from considerations of airport safety and security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed.

### Article 19 Environmental Protection

The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.





**Article 20****Statistics**

The aeronautical authorities of each Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Party, upon request, periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party.

**Article 21****Approval of Schedules**

1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least six (6) weeks prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.

2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party. Such requests shall usually be submitted at least two (2) working days prior the operation of such flights.

**Article 22****Consultations**

In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Contracting Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations. Such consultations shall begin within two (2) months of the date of receipt by the other Contracting Party of any such request.







**Article 23**  
**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 in the first-place endeavour to settle their dispute by bilateral negotiations.
2. If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be named by each Contracting Party and the third to be agreed upon by the two arbitrators so chosen, provided that such third arbitrator shall not be a national of either Contracting Party. Each of the Contracting Parties shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Contracting Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed upon within the period indicated, the President of the Council of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators. If the President is a national of the same country as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
3. Except as otherwise agreed, the arbitration tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than fifteen (15) days after the tribunal is fully constituted.
4. Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days of the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within fifteen (15) days after replies are due.
5. The tribunal shall attempt to render a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.



6. The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.

7. The arbitral tribunal shall reach its own decision by a majority of votes. Such decisions shall be binding on the Contracting Parties. Each Contracting Party shall bear the cost of its own member and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

#### **Article 24** **Amendments**

Any amendments of this Agreement agreed by the Contracting Parties shall come into effect when confirmed by an exchange of diplomatic notes.


#### **Article 25** **Multilateral agreements**

If a Multilateral Agreement concerning international air transport comes into force in respect of both Contracting Parties, the present Agreement shall be deemed to be amended so as to conform to the provisions of that Multilateral Agreement.

Any discussions with a view to determining the extent to which the present Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention shall take place in accordance with Article 22 above.

#### **Article 26** **Termination**

Either Contracting Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, or any shorter period of time as may be agreed by both Contracting Parties, unless the notice is withdrawn by agreement before the end of the expiry period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO.

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## Annex

## Route schedule

A. The designated Airline (s) of the Republic of Kenya shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

POINTS OF ORIGIN	INTERMEDIATE POINTS	POINTS OF DESTINATION	POINTS BEYOND
Points in Kenya	Any Points	Points in Barbados	Any Points

B. The designated Airline (s) of the Government of Barbados shall be entitled to operate scheduled international air services in both directions on the routes specified hereafter:

POINTS OF ORIGIN	INTERMEDIATE POINTS	POINTS OF DESTINATION	POINTS BEYOND
Points in Barbados	Any Points	Points in Kenya	Any Points

The Designated Airline(s) of both the Contracting Parties may, on any or all flights and at its option, operate in either or both directions; serve intermediate and beyond points on the routes in any combination and in any order; omit calling at any or all intermediate or beyond point(s); terminate its services in the territory of the other Contracting Party and/or in any point beyond that territory; serve points within the territory of each Contracting Party in any combination; transfer traffic from any aircraft used by them to any other aircraft at any point or points in the route; combine different flight numbers within one aircraft operation; and use owned or leased aircraft.





**Article 27**  
**Registration with ICAO**

This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by the Contracting Parties.

**Article 28**  
**Entry into force**

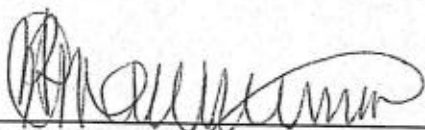
This Agreement shall be applied provisionally from the date of its signature and shall enter into force as soon as the two Contracting Parties have notified each other by an exchange of diplomatic notes, that their respective constitutional procedures for the entry into force of this Agreement have been completed.

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

Done at Bridgetown this 6th day of October in the year 2021  
in duplicate original copies in the English language.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF KENYA

FOR THE GOVERNMENT OF  
BARBADOS



AMB. RAYCHELLE A. OMAMO, SC, E.G.H.  
CABINET SECRETARY  
MINISTRY OF FOREIGN AFFAIRS



SEN. LISA CUMMINS  
MINISTER OF TOURISM AND  
INTERNATIONAL TRANSPORT







CONFIDENTIAL MEMORANDUM OF UNDERSTANDING

ON

AIR SERVICES

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

GOVERNMENT OF BARBADOS

LC



The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works of the Government of the Republic of Kenya and the Ministry of Tourism and International Transport of the Government of Barbados (hereinafter referred to as the "Contracting Party" or collectively the "Contracting Parties") have the common objective of promoting bilateral aviation relations and expanding economic opportunities for the designated airlines.

Both Contracting Parties have thus come to the following understanding:

### **Article 1** **Air Services Agreement**

1. Both Contracting Parties jointly decide on the draft Air Services Agreement (ASA) enclosed as Annex 1. As soon as all necessary national requirements have been met, both Contracting Parties will then recommend to their respective Governments the signature of the Agreement.
2. Until the Agreement has entered into force according to its Article 28, both Contracting Parties share the wish to apply its provisions on a purely administrative and strictly reciprocal basis within the framework of their respective national laws and regulations.

### **Article 2** **Designation**

1. In accordance with Article 3 (Designation and Authorization) of the ASA, the Government of Barbados will designate its airlines in due course.
2. In accordance with Article 3 (Designation and Authorization) of the ASA, the Government of the Republic of Kenya designates Kenya Airways.
3. The notification of such will be forwarded in writing via diplomatic channels.

### **Article 3** **Route Schedule and Frequencies**

1. Both Contracting Parties mutually decide on the routes specified in the Route Schedule annexed to the ASA.



2. There should be no restrictions on the frequency of operation for the designated airlines as well as the type of aircraft used and its capacity.

#### Article 4 Non-scheduled International Air Transportation

The Aeronautical Authorities of each Contracting Party shall give favourable consideration to any requests by the airlines of the other Contracting Party, for non-scheduled international air transportation, which may include routings via a third country.

#### Article 5 Development of Tourism

The Parties agree to recommend to the designated airlines that they use their best efforts to promote the development and growth of tourism between the respective countries.

#### Article 6 Notices

1. Any notice or request required or permitted to be given or made under this CMOU shall be in writing via diplomatic channels or sent by registered mail, postage prepaid to the Party to which it is required to be given or made at such Party's address specified in this CMOU or at such other address as the Party shall have specified in writing to the Party giving such notice or making such request.
2. Addresses provided below for the purpose of this Article and the Email address and Fax number are for communication other than Notices:

a) **For the Republic of Kenya**

Principal Secretary  
Ministry of Transport, Infrastructure, Housing,  
Urban Development and Public Works  
Transcom House  
Ngong Road  
P.O. Box 52692 – 00200 City Square  
Nairobi  
Fax: 254-20-2723076  
Email: [ps@transport.go.ke](mailto:ps@transport.go.ke)



b) For the Government of Barbados

Permanent Secretary

Ministry of Tourism and International Transport

One Barbados Place

4<sup>th</sup> and 5<sup>th</sup> Floors Warrens

St. Michael

Barbados

Fax: 1-246-535-3342

Email: [cadogand@tourism.gov.bb](mailto:cadogand@tourism.gov.bb)

**Article 7**  
**Amendments**

1. This CMOU may be amended as may be required from time to time by mutual written consent of the Contracting Parties.
2. Such amendments shall be signed and dated by the Contracting Parties prior to any changes being made and shall come into effect on such date as shall be mutually agreed upon by the Contracting Parties.

**Article 8**  
**Entry into effect**

1. Both Contracting Parties will apply the provisions of this Memorandum of Understanding as of its signing and it shall continue to have effect after the formal entry into force of the ASA.
2. This CMOU or individual provisions may be terminated by either one of the Contracting Parties at any time in writing via diplomatic channels.



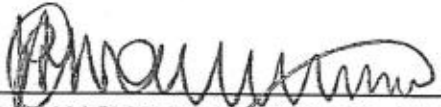



IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments have signed this Confidential Memorandum of Understanding in duplicate, in the English Language.

Signed in Bridgetown this 6th day of October 2021

FOR THE GOVERNMENT OF THE  
REPUBLIC OF KENYA

FOR THE GOVERNMENT OF  
BARBADOS

  
AMB. RAYCHELLE A. OMAMO, SC, E.G.H.  
CABINET SECRETARY  
MINISTRY OF FOREIGN AFFAIRS

  
SEN. LISA CUMMINS  
MINISTER OF TOURISM AND  
INTERNATIONAL TRANSPORT

