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AIR SERVICES

PARLIAMENT
OF KENYA
LIBRARY

AGREEMENT

BETWEEN

THE REPUBLIC OF KENYA

AND

**THE GOVERNMENT OF BURKINA
FASO**



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PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF KENYA

AND

THE GOVERNMENT OF BURKINA FASO

Hereinafter referred to as "the Contracting Parties",

Being PARTIES to:

The Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December 1944;

The Yamoussoukro Declaration on a New African Air Transport Policy adopted on 7th October 1988;

The Yamoussoukro Decision relating to the implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa of 14th November, 1999 as endorsed by the OAU Heads of State in July 2000 and ;

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

Have agreed as follows:

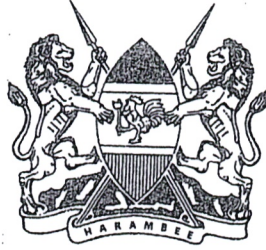


ARTICLE 1

DEFINITIONS

For the purpose of this Agreement and its Annexes, the following definitions shall apply unless otherwise indicated:

- a) **"Aeronautical Authorities"** means in the case of the Government of Burkina Faso, the Ministry in charge of Civil Aviation and in the case of the Government of the Republic of Kenya, the Cabinet Secretary in charge of Civil Aviation and/or, in both cases, any other person or body empowered to perform the functions now exercised by the above mentioned bodies;
- b) **"Agreed services"** means scheduled international air services on the routes specified on the Annex(es) to this Agreement for the transport of passengers, cargo and mail, separately or in any combination ;
- c) **"Agreement"** means this Agreement, its Annexes, and any amendments thereto ;
- d) **"Aircraft Equipment", "Air Supplies", Spare Parts"** have the same meanings ascribed to them in Annex 9 of the Convention ;
- e) **"Air Services", "International Air Service", "Stop for non-traffic purposes"** have the meaning ascribed to them in Article 96 of the Convention ;
- f) **"Convention"** means the Convention on International Civil Aviation Organisation signed in Chicago on the 7th December 1944 including all the Annexes approved according to article 90 of the aforementioned Convention and any other amendment to this Convention or to its Annexes reached according to articles 90 and 94, in so far as, these amendments and Annexes were approved by the two Contracting Parties;

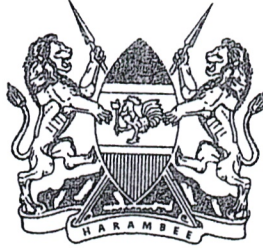


- g) **"Decision"** means the Decision relating to the Implementation of the Yamoussoukro Declaration concerning the liberalization of the access to Air Transport Markets in Africa;
- h) **"Designated Airline"** means an airline or airlines designated and Authorized in accordance with Article 3 of this Agreement;
- i) **"Tariffs"** means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply including the prices and conditions for agency and other ancillary services but excluding remunerations and conditions for the carriage of mail ;
- j) **"Territory"** has the same meaning as ascribed to it in Article 2 of the Convention.

ARTICLE 2

GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by a designated airline of the other Contracting Party;
 - (a) To fly without landing across the territory of the first Contracting Party;
 - (b) To make stops in the said territory for non traffic purposes and;
 - (c) to make stops in the said territory for the purpose of embarking and disembarking, while operating the agreed services, international traffic in passengers, cargo and mail, separately or in combination.



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

ARTICLE 3

DESIGNATION AND AUTHORISATION

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party one or more airlines to operate the agreed services and to withdraw or alter such designations.
2. Each Contracting Party may also designate an airline from a third state to operate air services on its behalf in accordance with Article 6 of the Yamoussoukro Decision.
3. Each Contracting Party shall have the right to designate a multinational company as its designated airline to exploit the agreed services in accordance with the provisions of Articles 77 and 79 of the Chicago Convention.
4. On receipt of such designation and subject to the provisions of Article 4 of this Agreement, the aeronautical authorities of the other Contracting Party shall grant without delay to an airline so designated the appropriate authorizations for the agreed services for which that airline has been designated.
5. Upon receipt of such authorizations the airline may begin at any time to operate the agreed services, in whole or in part, provided that the airline complies with the applicable provisions of this Agreement.



ARTICLE 4

APPROVAL OF SCHEDULES

1. The designated airline of either Contracting Party shall, at least 30 days prior to the date of operation of any agreed service, submit its proposed timetable to the Aeronautical Authorities of the other Contracting Party for their approval. Such timetables shall include all relevant information, including the type of service and aircraft to be used and the flight schedules.
2. If either designated airline wishes to operate supplementary or additional flights besides those covered in the approved timetable, it shall first notify the Aeronautical Authorities of the Contracting Party concerned.
3. Subject to the terms of the current article, no schedule will come into force if it is not approved by the Aeronautical Authorities of each Contracting Party.
4. The schedule approved for the season according to the terms of this article, will remain in force for the corresponding season until further approval of new programmes.

ARTICLE 5

REVOCATION, SUSPENSION AND LIMITATION OF AUTHORISATION

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

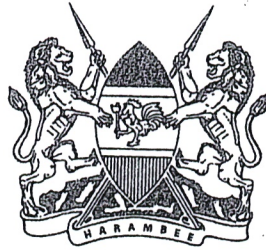


- (a) in the event of failure by such airline to qualify before the Aeronautical Authorities of that Contracting Party under the laws, regulations and rules normally and reasonably applied by these authorities in conformity with the Convention ;
 - (b) in the event of failure by such airline to comply with the laws, regulations and rules of that Contracting Party ;
 - (c) in the event that they are not satisfied that the airline is incorporated in and has its principal place of business in the territory of the other Contracting Party and holds a current Air Operators Certificate issued by the Aeronautical Authority of the other Contracting Party ;
 - (d) in the event that they are not satisfied that the airline is eligible in accordance with article 6.9 of the Yamoussoukro Decision ;
 - (e) in the event that the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate action is essential to prevent further infringement of the laws, regulations and rules referred to above, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations with the Aeronautical Authorities of the other Contracting Party in conformity with Article 16 of this Agreement.

ARTICLE 6

APPLICABILITY OF LAWS, REGULATIONS AND RULES

1. The laws, regulations and rules of one Contracting Party relating to the admission to, remaining in, or departure from its territory of aircraft engaged in international air navigation of such aircraft shall



be complied with by a designated airline of the other Contracting Party upon entrance into, departure from and while within the said territory.

2. The laws, regulations and rules of one Contracting Party respecting entry, clearance, transit, immigration, passports, customs and quarantine shall be complied with by a designated airline of the other Contracting Party and by or on behalf of its crew, passengers, cargo and mail upon transit of, admission to, departure from and while within the territory of such a Contracting Party.
3. Neither of the Contracting Parties 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 customs, immigration, quarantine and similar regulations.
4. Passengers, baggage and cargo in direct transit through the territory of either Contracting Party or not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances.
5. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

ARTICLE 7

RECOGNITION OF CERTIFICATES AND LICENCES

1. Certificates of airworthiness, certificates of competency and licenses, issued or validated by one Contracting Party and still in force shall be recognized as valid by the other Contracting Party for the purpose of operating the agreed services provided that such certificate or licenses were issued or validated pursuant to, and in conformity with, the standards established under the Convention.



2. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights over or landing within its own territory certificates of competency and licenses granted to its own nationals by the other Contracting Party.

ARTICLE 8

AVIATION SAFETY

1. Each Contracting Party may request consultations concerning the safety standards maintained by the other Contracting Party relating to aeronautical facilities, aircrew, aircraft and operation of a designated airline.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are least equal to the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards ; and the other Contracting Party shall take appropriate corrective action.
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 Contracting Party, on service to from the territory of another Contracting party, may, while within the territory of the other Contracting 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 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



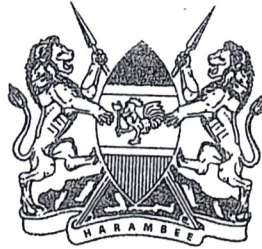
equipment and the condition of the aircraft conform to the standards established at that time pursuant to the Convention.

4. When urgent action is essential to ensure the safety of and airline operation, each Contracting Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Contracting Party.
5. 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;
6. 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 there of, the latter should also be advised of the subsequent satisfactory resolution of the situation.

ARTICLE 9

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, 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, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on September 23, 1971, and its 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 purposes of Detection signed at Montreal on the 1st of March 1991, and any other convention relating to aviation security to which the Contracting Parties shall become party.

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, 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. The parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization to the extent that these standards apply to the two parties and designated Annexes to the Convention, 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 the operators of airports in their territory act in conformity with such aviation security provision.
4. Each Party agrees to observe the security provisions required by the other Party for entry into, for departure from, and while within the territory of that other Party and to take adequate measures to protect 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. When a Party has reasonable grounds to believe that 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 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 permission 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 10

EXEMPTION FROM CUSTOMS DUTIES & OTHER CHARGES

1. Each Contracting Party shall on a basis of reciprocity exempt a designated airline of the other Contracting 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 on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores (including liquor, tobacco) and other products destined for sale to passengers in limited quantities during a flight and other items intended for use or used 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 those referred to in paragraph 1 of this Article:
 - (a) Introduced into the territory of one Contracting Party by or on behalf of a designated airline of the other Contracting Party;



- (b) Retained on board aircraft of a designated airline of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party;
- (c) Taken on board aircraft of a 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 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 Contracting 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.
- 4. Each Contracting Party shall undertake to exempt the airline designated by the other Contracting Party from payment of any state or local community taxes on its revenues earned while operating international air services.

ARTICLE 11

FAIR COMPETITION

- 1. Each Party shall allow a fair and equal opportunity for the designated Airline(s) of both Parties to compete in providing the international air transportation covered by this Agreement.



2. Each Party shall take 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. Neither Party shall unilaterally limit the volume of traffic frequency or regularity of service, or aircraft type or types operated by the designated Airline(s) of the other Party, in terms of this Agreement, except as may be required for customs, technical, operational or environment reasons under uniform conditions consistent with Article 15 of the Convention.
4. Either Party may require the filing of schedules, Programmes for Charter Flights or operational plans by airlines of the other Party for approval. Provided such a requirement may be on a non-discriminatory basis. If a Party requires filings it shall minimize the administrative burden of filing requirement and procedures on air transportation intermediaries and on designated airlines of the other party.
5. Any restrictions on the operations of the designated Airline(s) of the other Contracting Party shall be in accordance with the terms of this Agreement and its Annexes or by such applicable conditions of the Convention.

ARTICLE 12

TARIFFS

1. The tariffs applicable between the territories of the two Contracting Parties shall be established at reasonable levels, due regard being paid to all relevant factors, including the cost of operation, the interests of users, reasonable profit, class of service and, when it is deemed appropriate, the tariffs of other airlines operating over whole or part of the routes specified in the Annex.



2. Each Party shall allow prices for air transport to be established by each designated airline based on commercial consideration 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; and
 - (c) Protection of airlines from prices that is artificially low due to direct or indirect government subsidy or support.
3. Each Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both parties may be required not more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification nor filing by airlines of the other Party of prices charged by charterers to the public, except as be required on a non-discriminatory basis for information purposes.
4. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged by (a) an airline of either Party for international air transport between the territories of the Parties (b) an airline of one Party for international air transport between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the consideration set forth in paragraph 1 of this article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in security information necessary for reasoned resolution of the issue.
5. If the parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each party shall use its best



efforts to put that agreement into effect. Without such agreement the price shall go into effect or continue in effect.

6. In case of tariff increase, there shall be no approval required by the aeronautical authorities of State Parties concerned for tariff to be charged by the designated airlines of State Parties for the carriage of passenger, cargo and mail. The airline shall in this case notify such tariffs before they enter into effect.

ARTICLE 13

AIRLINE REPRESENTATION

1. A designated airline of one Contracting Party shall be allowed, on the basis of reciprocity and subject to paragraph 3 of this article, to bring into and maintain in the territory of the other Contracting Party its representatives and commercial operational and technical staff as required in connection with the operation of the agreed services.
2. 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 as authorized to perform such services in the territory of that Contracting Party.
3. The representatives and staff referred to in paragraph 1 of this article shall be subject to the law and regulations of the other Contracting Party and, consistent with such law and regulations, each Contracting Party, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the said representatives and staff.



ARTICLE 14

COMMERCIAL OPPORTUNITIES AND TRANSFER OF FUNDS

1. Any designated airline of one Contracting Party shall have the right to engage in the sale of tickets in the territory of the other Contracting Party directly and, at its discretion, through its agents. Such designated airline shall have the right to sell tickets in the currency of that territory, or to the extent permitted by national law, in freely convertible currencies of other countries, and to the same extent any person shall be free to purchase such tickets in currencies accepted for sale by that airline.
2. Each Contracting Party grants to any designated airline of the other Contracting Party the right of free transfer, at the official rate of exchange, of the excess of revenues over expenditure and taxes earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, cargo and mail.
3. In the event there is no official exchange rate, the transfer of earnings shall be effected at a rate equivalent to that at which the receipts were earned.

ARTICLE 15

STATISTICS

The aeronautical authorities of either Contracting Party shall supply to the aeronautical authorities of the other Contracting Party, at their request, such periodic or other statements of statistics as may be reasonably required to determine the amount of traffic.



ARTICLE 16

CONSULTATION

1. In a spirit of close co-operation, 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 shall also consult when necessary to provide for amendment thereof.
2. Either Contracting Party may request consultation, which may be conducted and shall begin within a period of sixty (60) days of receipt of a written request, unless both Contracting Parties agree to an extension of this period.

ARTICLE 17

SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall 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, or either Contracting Party may submit 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 arbitrators. 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 arbitrage of the dispute and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council



of the International Civil Aviation Organization may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires. In all cases the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision made under paragraph 2 of this Article.
4. If as so long as either Contracting Party or a designated airline of either Contracting Party fails to comply with a decision under paragraph (2) of this Article, the other Contracting Party may limit, withhold or revoke any rights which it has granted by virtue of this Agreement to the Contracting Party in default or to the designated airline or airlines of that Contracting Party.

ARTICLE 18

AMENDMENT OF AGREEMENT

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, it may request consultations with the other Contracting Party. Such consultations, which may be between the aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty (60) days of receipt of a written request unless both Contracting Parties agreed to an extension of this period. Any amendments so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.



ARTICLE 19

MULTILATERAL AGREEMENT

This Agreement shall be amended so as to conform to any multilateral agreement on air transport which may become binding on both Contracting Parties.

ARTICLE 20

REGISTRATION

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

ARTICLE 21

TERMINATION

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; such notice shall be communicated simultaneously to the International Civil Aviation Organization.

The Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of the acknowledgement of the receipt by the other Contracting Party, the notice shall be deemed to have been received



fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

ARTICLE 22

ENTRY INTO FORCE

This Agreement shall be effective from the date of signature and shall enter into force definitively when both parties have notified each other that all their constitutional procedures required for the entry into force of the Agreement have been complied with.

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

DONE AT Nairobi, on this 14th day of December 2018 in two originals each in the English and French Languages, both texts being deemed equally authentic.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA**

James W. Macharia, EGH
Cabinet Secretary
Ministry of Transport, Infrastructure,
Housing, Urban Development and
Public Works

**FOR THE GOVERNMENT
OF BURKINA FASO**

Vincent Timbindi Dabilgou
Minister for Transports, Urban
Mobility and Road Safety



ANNEX

ROUTE SCHEDULE

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

Point(s) in Kenya	Intermediate Point(s)	Point(s) in Burkina Faso	Point(s) Beyond
Any International Airport	Any points in Africa	Any International Airport	Any points in Africa

For the designated airline(s) of Burkina Faso

Point(s) in Burkina Faso	Intermediate Point(s)	Point(s) in the Republic of Kenya.	Point(s) Beyond
Any International Airport	Any points in Africa	Any International Airport	Any points in Africa

Notes:

1. Any point on the above routes may at the option of the airline concerned be omitted on any or all flights. Provided that any service either begins or terminates in the territory of the country designating the airline.
2. Designated airlines shall enjoy the 3rd and 4th freedom traffic rights. Exercise of the 5th freedom traffic rights shall be subject to approval by the aeronautical authorities.