

*AIR SERVICES AGREEMENT*

*BETWEEN*

*THE GOVERNMENT OF THE REPUBLIC OF INDIA*

*AND*

*THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA*

## Preamble

The Government of the Republic of India and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and in the singular as a "Party");

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

**ACKNOWLEDGING** the importance of air transportation as a means of creating and preserving friendship, understanding and co-operation between the peoples of the two countries;

**DESIRING** to contribute to the progress of international civil aviation;

**DESIRING** to conclude an Agreement for the purpose of establishing air services between their respective territories;

**HEREBY AGREE** as follows:

## Article 1

### Definitions

In this Agreement, unless the context indicates otherwise -

"aeronautical authority" means, in the case of the Republic of South Africa, the Minister responsible for civil aviation and, in the case of the Republic of India, the Director General of Civil Aviation, or in either case any person or body authorised to perform any particular function provided for in this Agreement;

"agreed service" means a scheduled international air service on the routes specified in the Annex to this Agreement for the transport of passengers, baggage, cargo and mail in accordance with agreed capacity entitlements;

"Agreement" means this Agreement, the Annex thereto and any amendments to the Agreement or to the Annex;

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

"Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December 1944, and includes -

- (a) any Annex or any amendment thereto adopted in terms of Article 90 of the Convention, insofar as such Annex or amendment is binding on the Parties; and
- (b) any amendment which has entered into force in terms of Article 94(a) of the Convention and has been ratified by the Parties in accordance with their applicable domestic law;

"designated airline" means one or more airlines designated and authorised in accordance with Article 3 of this Agreement;

"regular equipment" means an article, other than stores and spare parts of a removable nature, for use on board an aircraft during flight, including first aid and survival equipment;

"spare part" means an article of a repair or replacement nature for incorporation in an aircraft;

"specified route" means a route specified in the Annex to this Agreement;

"tariff" means the prices to be charged for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions of agency and other auxiliary services, but excluding remuneration and conditions for carriage of mail;

"territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention; and

"user charges" means a charge imposed on airlines for the provision of airport, air navigation or aviation security facilities or services, including related services and facilities for aircraft, their crews, passengers, baggage and cargo.

## Article 2

### Grant of Rights

1. Each Party grants to the other Party the rights provided for in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Annex.
2. Subject to the provisions of this Agreement, the designated airline of each Party shall have the right-
  - (a) to fly across the territory of the other Party without landing;
  - (b) to make stops in that territory for non-traffic purposes; and
  - (c) to land in the territory of the other Party for the purpose of taking on board and discharging traffic in passengers, baggage, cargo and mail while operating an agreed service.
3. The airlines of each Party, other than those designated in terms of Article 3, shall also have the rights provided for in sub-Article (2) (a) and (b).
4. Nothing in sub-Article (2) shall confer on a designated airline of a Party the right of taking on board in the territory of the other Party, passengers, baggage, cargo and mail destined for another point in the territory of the other Party.
5. If because of special and unusual circumstances, a designated airline of a Party is unable to operate a service on its normal routes, the other Party shall use its best efforts to facilitate the continued operation of such service through appropriate temporary rearrangements of such routes, including the temporary granting of alternative rights, as mutually decided by the Parties.
6. The designated airlines of one Party shall have the right to use airways, airports and other facilities provided by the other Party on a non-discriminatory basis.

### Article 3

#### Designation and Authorisation

1. Each Party shall have the right to designate an airline or airlines for the purpose of operating the agreed services on the specified routes and to withdraw or alter such designations. Such designations shall be made in writing and transmitted to the other Party through diplomatic channels and shall identify whether the airline is authorised to conduct the type of air services specified in the Annex.

2. Upon receipt of such designation and application from the designated airline(s) of either Party, in the form and manner prescribed for the purpose, the aeronautical authorities of the other Party shall grant the appropriate operating authorisation with minimum procedural delay: provided that-

- (a) substantial ownership and effective control of that airline are vested in the Party designating the airline or its nationals;
- (b) the designated airline is qualified to meet the conditions prescribed under the domestic law normally applied to operation of international air services by the Party considering the application; and
- (c) the Party designating the airline is maintaining and administering the standards set forth in Article 9 and Article 10.

### Article 4

#### Revocation, Suspension and Limitation of Authorisation

1. Either Party may revoke or suspend the operating authorisation granted to an airline designated by the other Party or impose such conditions as it may deem necessary in any case where-

- (a) substantial ownership and effective control of that airline are not vested in the other Party or its nationals;
- (b) that airline has failed to comply with the domestic law referred to in Article 6; or
- (c) the other Party is not maintaining and administering the standards set out in Article 9.

2. Unless immediate action is essential to prevent further non-compliance with sub-Article (1)(b) and (c) the rights established by this Article shall be exercised only after consultation with the other Party.

3. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorisation of an airline of the other Party in accordance with the provisions of Article 10.

## Article 5

### Principles Governing the Operation of Agreed Services

1. There shall be fair and equal opportunity for the designated airlines of both Parties to operate the agreed services on the specified routes between their respective territories.
2. The capacity to be provided and the frequency of services to be operated by the designated airline(s) of each Party shall be agreed between both Parties.
3. Any increase in the capacity to be provided and the frequency of services to be operated by the designated airlines of each Party shall be subject to agreement between both Parties. Pending such an agreement or settlement, the capacity and frequency entitlements already in force shall prevail.

## Article 6

### Application of Domestic Laws

1. The domestic law in force in the country of a Party relating to the admission to, sojourn in, or departure from its territory of aircraft engaged in international air services, or to the operation and navigation of such aircraft, shall be applied to the aircraft of a designated airline of the other Party upon its entry into, departure from and while within the territory of the first Party.
2. The domestic law in force in the country of a Party relating to the admission to, sojourn in and departure from its territory of passengers, baggage, crew, cargo or mail of aircraft, including the domestic law relating to entry, clearance, aviation security, immigration, passports, customs, quarantine and sanitary measures, or in the case of mail, postal laws and regulations, shall be complied with by or on behalf of such passengers, baggage, crew, cargo or mail of the designated airline of the other Party upon entrance into or departure from and while within the territory of the first Party.
3. Passengers, baggage, cargo and mail in direct transit across the territory of either Party and not leaving the area of the airport reserved for such purposes shall, except in respect of security measures, narcotics control or in special circumstances, be subject to no more than a simplified control.
4. Neither Party may grant any preference to its own or any other airline over the designated airline of the other Party in the application of domestic law referred to in this Article.

## Article 7

### User Charges

1. User charges that may be imposed by the competent charging authorities of each Party on the designated airline(s) of the other Party shall be just, reasonable, non-discriminatory, and equitably apportioned among all categories of users. Such user charges shall be assessed on the designated airline(s) of the other Party on terms not less favourable than the terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the designated airline(s) of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities of providing the appropriate 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 Party shall encourage consultations between the competent charging authorities in its territory and the designated airline(s) using the services and facilities. Each Party shall encourage the competent charging authorities and the airlines to exchange such information as may be necessary to permit an accurate and transparent review of the reasonableness of the charges in accordance with the principles stated in sub-Article (1) and (2). Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in the user charges to enable the users to express their views before changes are implemented.

4. Neither party shall be held, in dispute resolution procedures pursuant to Article 21, to be in breach of a provision of this Article, if -

- (i) it has undertaken a review of the charge or practice that is the subject of complaint by the other Party within a reasonable time; and
- (ii) following such a review, it has taken all steps within its power to remedy any charge or practice that is inconsistent with this Article.

## Article 8

### Recognition of Certificates and Licences

1. A certificate of airworthiness, a certificate of competency and any licence issued, or rendered valid by a Party and which is still in force, shall be recognised as valid by the other Party for the purpose of operating the agreed services:
  - a) Provided that such a certificate or licence was issued or rendered valid pursuant to, and in conformity with, the minimum standards established in terms of the Convention: and
  - ib) Provided further that each Party reserves the right to refuse to recognise, any certificate of competency and any licence granted to its own nationals by another State.
2. If the privileges or conditions of a licence or certificate issued or rendered valid by a Party permit a difference from the standards established in terms of the Convention, whether or not that difference has been filed with the International Civil Aviation Organisation, the other Party may, without prejudice to the rights of the first Party, request consultations in accordance with Article 19 with the first Party with a view to satisfying itself that the practice in question is acceptable to it.

## Article 9

### Aviation Safety

1. A Party may request consultations at any time concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of such request or any longer period as may be agreed between the Parties.
2. If, following such consultations, a Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to above which are at least equal to the minimum standards established at that time pursuant to the Convention, the first Party shall notify the other Party of those findings and the steps considered necessary to conform with those minimum standards.
3. Each party reserves the right to suspend or limit the operating authorization of airline(s) designated by the other Party in the event the other Party does not take appropriate corrective action within 30 days.
4. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated airline of one Party on services to or from the territory of the other Party, may, while within the territory of the other Party, be subject to an examination by the authorised representative of that Party. The purpose of such examination shall include the verification of the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (hereinafter referred as "ramp inspection"), provided this does not lead to unreasonable delay.



5. If any such ramp inspection or series of ramp inspections gives rise to serious concerns that-
- (a) 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) there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention,

the Party carrying out the ramp 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.

6. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the designated airline of one Party in accordance with sub-Article (4) is denied by the representatives of that designated airline, the other Party may infer that serious concerns of the type referred to in sub-Article (5) arise and draw conclusions referred to in that sub-Article.

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

8. Any action by one Party in accordance with sub-Articles (3) and (7), shall be discontinued upon compliance by the other Party with the safety provisions of this Article.

## Article 10

### Aviation Security

1. Consistent with their rights and obligations under international law binding on the Parties, the Parties affirm that their obligation to protect, in their mutual relationship, the security of civil aviation against acts of unlawful interference, forms an integral part of this Agreement.

2. Subject to applicable domestic law and without derogating from the generality of their rights and obligations in terms of 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, opened for signature at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971 and its Protocol done at Montreal on 24 February, 1988; and any other multilateral agreement governing civil aviation security binding upon both Parties.

3. 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.

4. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention on International Civil Aviation to the extent that such security provisions are applicable to both Parties.

5. The Parties shall require that operators of aircraft of their registry, or operators of aircraft who have their principal place of business or permanent residence in their respective territories, and the operators of airports in their respective territories, act in conformity with such aviation security provisions as are applicable to both Parties.

6. Each Party agrees that its operators of aircraft shall be required to observe the aviation security provisions referred to in sub-Article (4) applied by the other Party for entry into, sojourn in or departure from 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 apply security controls to passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall give positive consideration to any request from the other Party for reasonable special security measures in its territory to meet a particular threat to civil aviation.

7. If an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful act against the safety of such aircraft, their passengers and crew, airports and air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat as rapidly as possible commensurate with minimum risk to life.

8. Each Party shall take such measures as it may find practicable to ensure that an aircraft of the other Party, subjected to an act of unlawful seizure or any other act of unlawful interference, which is on the ground in its territory, is detained thereon unless its departure is necessitated by the overriding duty to protect the lives of its crew and passengers. Wherever practicable, such measures shall be taken on the basis of consultations with the other Party.

9. If a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the aeronautical authority of the first Party may request immediate consultations with the aeronautical authority of the other Party. Failure to reach a satisfactory agreement within fifteen days from the date of such request shall constitute grounds for the application of sub-Article (1) of Article 4. If required by an emergency, a Party may take action in terms of Article 4 prior to the expiry of fifteen days. Any action taken in accordance with this sub-Article shall be discontinued upon compliance by the other Party with the security provisions of this Article.

## Article 11

### Customs Duties and other Charges

1. Each Party shall, on the principle of reciprocity, exempt the designated airline(s) of the other Party to the fullest extent possible under the national law in force in its country from 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 but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale or to be used solely in connection with the operation or servicing of aircraft) 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 the designated airline(s).

2. The exemptions under this Article shall be granted only if the items referred to in sub-Article (1) are --

- (a) introduced into the territory of one Party by or on behalf of the designated airline(s) of the other Party;
- (b) retained on board aircraft of the designated airline(s) of one Party upon arrival in or leaving the territory of the other Party; or
- (c) taken on board aircraft of the designated airline(s) of one Party in the territory of the other Party for use in operating the agreed services.

3. The exemptions under this Article shall apply regardless of the fact 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. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of the designated airline(s) of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that Party. In such a case, they may be placed under supervision of the said authorities upto such time as they are re-exported or otherwise disposed of in accordance with the customs regulations.

## Article 12

### Commercial Activities

1. The airline(s) of each Party shall have the right to establish offices in the territory of the other Party for promotion and sale of air services and other ancillary products and facilities required for the provision of air services.
2. The airline(s) of each Party shall be entitled, in accordance with the domestic law in force in the country 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, operational and other specialist staff required for the provision of air services and other ancillary products and facilities. Such staff requirements may, at the option of the airline, be satisfied by its own personnel of any nationality or by using the services of any other airline, organisation or company operating in the territory of the other Party and authorised to perform such services in the territory of such other Party.
3. Any airline of each Party may engage in the sale of air services and its ancillary products, services and facilities in the territory of the other Party directly and, at the airline's discretion, through its agents. For this purpose, the airline shall have the right to use its own transportation documents and any person shall be free to purchase such transportation and its ancillary products, services and facilities in the currency of that territory or in freely convertible currencies.
4. The airline(s) of each Party shall have the right to convert and transfer freely in any convertible currency, on demand, local revenues in excess of sums locally disbursed earned by such airlines in connection with the sale of air transportation and other ancillary products, services and facilities as well as interest earned on such revenues (including interest earned on deposits awaiting transfer). Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the airline makes the initial application for remittance.
5. The airline(s) of each Party shall be permitted to pay for local expenses, including purchase of fuel, in the territory of the other Party in local currency. At their discretion, the airline(s) of each Party may pay for such expenses in the territory of the other Party in freely convertible currencies in accordance with the domestic law in force in the country of the other Party.
6. Notwithstanding anything contained in this Article, the exercise of rights under this Article shall be in accordance with the applicable domestic law consistent with the purposes of this Agreement. If one Party imposes restrictions on the transfer of local revenues in excess of sums locally disbursed by the designated airlines of the other Party, the latter shall have the right to impose reciprocal restrictions on the designated airlines of the first Party.

## Article 13

### Tariffs

1. The tariffs in respect of the agreed services operated by the designated airline(s) of each Party shall be established by each designated airline based upon its commercial considerations in the market place at reasonable levels, due regard being paid to all relevant factors, including the cost of operation and reasonable profit.
2. The tariffs established in terms of sub-Article (1) shall not be required to be filed by the designated airline(s) of one Party with the aeronautical authorities of the other Party.
3. Notwithstanding the foregoing, each Party shall have the right to intervene so as to -
  - (a) prevent tariffs whose application constitutes anti-competitive behavior which has or is likely to or intended to have the effect of crippling a competitor or excluding a competitor from a route;
  - (b) protect consumers from tariffs that are excessive or restrictive due to the abuse of a dominant position; and
  - (c) protect airlines from tariffs that are predatory or artificially low.
4. For the purposes set out in sub-Article (3), the aeronautical authorities of one Party may require the designated airlines of the other Party to provide information relating to the establishment of the tariffs.
5. If one Party believes that the tariff charged by designated airline(s) of the other Party is inconsistent with the considerations set forth in sub-Article (3), it shall notify the other Party of the reasons for its dissatisfaction as soon as possible and request consultations which shall be held not later than 30 days after receipt of the request. If the Parties reach an agreement with respect to the tariff for which a notice of dissatisfaction has been given, each 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.

## Article 14

### Co-operative Marketing Arrangements

1. The designated airline(s) of each Party may enter into co-operative marketing arrangements, such as code-share, block space or any other joint venture arrangement, with –
  - (a) the designated airline(s) of the same Party; or
  - (b) the designated airline(s) of the other Party; or
  - (c) the designated airline(s) of a third country.
2. The designated airline(s) of each Party may enter into domestic code sharing arrangements with airlines of the other Party for the carriage of through traffic between points in the territory of the other Party in accordance with their respective Route Schedules.
3. The operating airline(s) 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.
4. All marketing airline(s) involved in the co-operating arrangements shall hold the underlying route rights and meet the requirements normally applied to such arrangements.
5. The total capacity operated by the air services performed under such arrangements shall be counted only against the capacity entitlement of the 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 Party designating that airline.
6. The designated airline(s) of either side shall be allowed to transfer traffic (i.e. starburst) between aircraft involved in the code-share operations without restriction as to number, size and type of aircraft.
7. In addition to the operating airline(s), the aeronautical authorities of each side may require the marketing airline(s) to file schedules for approval and also provide any other documents before commencement of air services under the co-operative marketing arrangements.
8. When holding out services for sale under such arrangements, the concerned airline 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 airline(s) the purchaser is entering into a contractual relationship.
9. Before providing code sharing services, the code sharing partners shall agree as to who shall be responsible for security, safety, facilitation, liability and other consumer related matters. Such an agreement shall be filed with the aeronautical authorities of both Parties before implementation of the code-share arrangements.

## Article 15

### Intermodal Services

The designated airline(s) of each Party shall be permitted to employ, in connection with air transport of passengers and cargo, any intermodal transport to or from any point in the territory of the other Party. Such airline(s) may elect to perform their own intermodal transport or to provide it through arrangements, including code share, with other carriers. The intermodal services may be offered as a through service and at a single price for the air and intermodal transport combined, provided that passengers and shippers are informed as to the providers of such transportation.

## Article 16

### Approval of Schedules

1. The designated airline(s) of a Party shall submit to the aeronautical authority of the other Party for its approval, thirty (30) days in advance, the timetable of intended services, specifying the frequency, type of aircraft, and its configuration.
2. Any subsequent changes to the approved timetables shall be submitted by the designated airline(s) for approval of the aeronautical authority of the other Party.
3. If a designated airline wishes to operate flights supplementary to those covered in the approved timetables, it shall obtain the prior permission of the aeronautical authority of the Party concerned.

## Article 17

### Provision of Statistics

1. The aeronautical authorities of each Party shall provide or cause its designated airline(s) to provide to the aeronautical authorities of the other Party statistics relating to the traffic carried during each month on the agreed services to and from the territory of that other Party, showing the points of embarkation and disembarkation of such traffic. Such statistics shall be furnished as soon as possible after the end of each month, but not later than 30 days following the month to which they relate.
2. The aeronautical authorities of each Party shall, on request, provide or cause its designated airline(s) to provide to the aeronautical authorities of the other Party statistics relating to true origin and destination of traffic carried to and from the territory of that other Party.

## **Article 18**

### **Multilateral Agreements**

1. In implementing this Agreement, the Parties shall act in conformity with the provisions of the Convention in-so-far as those provisions are applicable to international air services.
2. If, after entry into force of this Agreement, both Parties become party to a multilateral agreement that addresses matters covered by this Agreement, either Party may request consultations to determine whether this Agreement should be revised to take into account the multilateral agreement.

## **Article 19**

### **Consultations**

1. Either Party may, at any time, make a request in writing for consultations on the implementation, interpretation, application, amendment of, or compliance with this Agreement.
2. Unless otherwise agreed by the Parties, such consultations shall begin within a period of 60 days from the date on which the other Party receives the request.

## **Article 20**

### **Amendment of Agreement**

1. This Agreement may be amended by mutual consent of the Parties through an exchange of notes between the Parties through the diplomatic channels.
2. Any amendment so agreed shall enter into force in accordance with the provisions of Article 24.
3. Notwithstanding the provisions of sub-Article (2), the Parties may agree to give immediate effect to an amendment to the Annex to this Agreement.



## Article 21

### Settlement of Disputes

1. Any dispute arising out of the interpretation or implementation of this Agreement that is not resolved by formal consultations may be referred, by agreement of the Parties, to some person or body for decision. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.
2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:-
  - (a) Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
  - (b) If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with sub-Article (2) (a), either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the senior most Vice President who is not disqualified on that ground shall make the appointment. In the event that either the President or the senior most qualified Vice President appoints the third arbitrator under this sub-Article that third arbitrator shall not be a national of either of the Parties.
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 rules of procedure. The tribunal, once formed, may recommend interim relief measures 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. Except as otherwise agreed or as directed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or on its own initiative within 15 days after replies are due.
5. The tribunal shall attempt to render a written decision within 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. Either Party may make a request for clarification on the decision within 15 days after it has been rendered and the clarification shall be issued within 15 days of such request.
7. Each Party shall, to the extent consistent with the domestic law in force in its country, give full effect to any decision or award of the arbitral tribunal.
8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedure set out in sub-Article (2) (b) shall be considered to be part of the expenses of the arbitral tribunal.

## Article 22

### Registration of Agreement

The Parties shall submit this Agreement and any subsequent amendments thereto to the International Civil Aviation Organisation for registration.

## Article 23

### Termination of Agreement

1. Either Party may at any time from the entry into force of this Agreement give notice in writing through the diplomatic channel to the other Party of its intention to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organisation. The Agreement shall terminate one year after the date of receipt of the notice by the other Party unless the notice to terminate is withdrawn by agreement before the expiry of this period.

2. In default of acknowledgement of receipt of a notice of termination by the other Party, the notice shall be deemed to have been received fourteen days after the date on which the International Civil Aviation Organisation acknowledged receipt thereof.

## Article 24

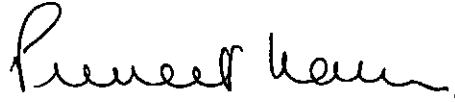
### Entry into Force

This Agreement shall enter into force on the date on which each Party has notified each other in writing through the diplomatic channel of its 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 and sealed this Agreement in two originals in the English and Hindi languages, all texts being equally authentic. In the event of divergence of interpretation, the English text shall prevail.

DONE at New Delhi on this 4<sup>th</sup> day of June, 2010

**For the Government of the  
Republic of India**

  
(Smt. Preneet Kaur)  
Minister of State for External Affairs

**For the Government of the  
Republic of South Africa**

  
(Mr. Sibusiso Ndebele)  
(Minister of Transport)

## Annex

### Route Schedule

#### Section I

##### **Routes for the designated airline(s) of the Republic of India**

Point(s) of Origin	Intermediate Point(s)	Point(s) in the Republic of South Africa	Point(s) Beyond
Points in India	Mauritius	Johannesburg, Cape Town, Durban and three points to be agreed.	Points in Brazil

#### Section II

##### **Routes for the designated airline(s) of the Republic of South Africa**

Point(s) of Origin	Intermediate Point(s)	Point(s) in the Republic of India	Point(s) Beyond
Points in South Africa	To be agreed	Delhi, Mumbai, Trivandrum and three points to be agreed.	Bangkok (with 5 <sup>th</sup> freedom traffic rights from Mumbai only).

#### Section III

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. Points mentioned in Section I and Section II need not necessarily be served in the order named.
3. Intermediate or beyond points not specified in Section I and Section II may be served provided no 5<sup>th</sup> freedom traffic rights are exercised between such points and any point in the territory of the other Party.
4. Two or more points in the territory of one Party shall not be served on the same flight by the designated airline(s) of the other Party. However, the designated airlines of India may serve both Johannesburg and Durban in combination on the same flight and the designated airlines of South Africa may serve both Mumbai and Trivandrum in combination on the same flight, without cabotage rights.