

AIR SERVICES AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF UKRAINE

The Government of India and the Government of Ukraine 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 promote their mutual relations in the field of civil aviation and to conclude an Agreement for the purpose of establishing air services between and beyond their respective territories ;

Have agreed as follows :

ARTICLE 1

DEFINITIONS

1. For the purpose of this Agreement, unless the context otherwise requires :
 - (a) the term "aeronautical authorities" shall mean, in the case of India, the Director General of Civil Aviation and in the case of Ukraine, the Air Transport, State Administration of the Ministry for Transport or in both cases, any person or body authorised to perform the functions currently exercised by the said authorities.
 - (b) the term "designated airlines" shall mean airlines which the aeronautical authorities of one Contracting Party have designated in writing to the aeronautical authorities of the other Contracting Party, in accordance with Article 3 of this Agreement.
 - (c) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or of the Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties, and
 - (d) the terms "territory", "air services", "international air service" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Articles 2 and 96 of the Convention.

ARTICLE 2

GRANT OF TRAFFIC RIGHTS

1. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the Annex thereto. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.
2. Subject to the provisions of this Agreement, the airlines designated by each Contracting Party shall enjoy the following rights :
 - (a) to fly without landing across the territory of the other Contracting Party ;
 - (b) to make stops in the territory of the other Contracting Party for non-traffic purposes; and
 - (c) while operating an agreed service on a specified route, the airlines designated by each Contracting Party shall also enjoy the right to embark and disembark, in the territory of the other Contracting Party at the point (s) specified for that route in the Annex to this Agreement, international traffic in passengers, cargo or mail.
3. Nothing in paragraph 2 of this Article shall be deemed to confer on the airlines of one Contracting Party the privilege of taking on, in the territory of the other Contracting Party passengers, cargo or mail destined for another point in the territory of that other Contracting Party.

ARTICLE 3

DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate in writing to the other Contracting Party upto two airlines for the purpose of operating the agreed services on the specified routes.
2. On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs 3 and 4 of this Article, without delay grant to the airlines designated the appropriate operating authorisations.
3. The aeronautical authorities of one Contracting Party may require the airlines designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied to the operation of

international air services by such authorities in conformity with the provisions of the Convention.

4. Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph 2 of this Article, or to impose such conditions as it may deem necessary on the exercise by the designated airlines of the rights specified in Article 2, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals. For the purpose of this paragraph, the expression "substantial ownership and effective control" means that in any case where the designated airline operates its services under this Agreement by entering into any agreement with the airline of any other country or the Government or nationals of any other country, the Contracting Party designating the airline or its nationals shall not be deemed to have substantial ownership and effective control of the designated airline, unless the Contracting Party or its nationals, in addition to the ownership of the major part of the assets of the designated airline, have also :

- (i) effective control in the management of the designated airline ; and
- (ii) ownership and effective control of the major part of the fleet of aircraft and equipment used in the operation of the services.

5. The airlines so designated and authorised may begin to operate the agreed services at any time provided that the provisions of this Article and of Articles 10 and 12 have been complied with.

ARTICLE 4

REVOCATION OR SUSPENSION OF OPERATING AUTHORISATION

Each Contracting Party reserves the right to itself to revoke or suspend the operating authorisation or impose such appropriate conditions as it may deem necessary in the case of failure by a designated airline of the other Contracting Party to comply with the laws and regulations of the former party, or in case, in the judgement of the former party, there is a failure to fulfil the conditions under which the rights are granted in accordance with this Agreement. This shall also apply if the provisions of paragraph 4 of Article 3 are not complied with. Such action shall be taken only after consultation between the Contracting Parties in accordance with Article 15 of this Agreement unless an immediate suspension of operations or imposition of conditions is necessary to avoid further infringement of laws, regulations or provisions of this Agreement.

ARTICLE 5

USER CHARGES

1. Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of airports and other aviation facilities, provided that these charges shall not be higher than those paid by other airlines engaged in similar international air services.
2. Each Contracting Party shall encourage consultations between its competent charging organizations and the designated airlines using the services and facilities and, where practicable, through the airlines' representative Organizations. Reasonable notice should be given to users of any proposals for changes in user charges to enable them to express their views before changes are made.
3. Neither of the Contracting Party shall give preference to its own or to any other airline over an airline engaged in similar international air services of the other Contracting Party in the application of its customs, immigration, quarantine and similar regulations or in the use of airports, airways, air traffic services and associated facilities under its control.

ARTICLE 6

CUSTOMS DUTIES AND PROCEDURES

1. Aircraft operated on international services by the designated airlines of either Contracting Party, as well as their regular equipment, supplies of fuels and lubricants and aircraft stores already on board, introduced into or taken on board such aircraft and intended solely for use by or in such aircraft shall, with respect to all customs duties, inspection fees and other duties or taxes, be accorded in the territory of the other Contracting Party, treatment not less favourable than that granted by the other Contracting Party to its own airline operating scheduled international air services or to the airlines of the most favoured nation.
2. The same treatment shall be accorded to spare parts entered into the territory of either Contracting Party for the maintenance or repair of aircraft used on international services by the designated airlines of the other Contracting Party.
3. Neither Contracting Party shall be obliged to grant to the designated airlines of the other Contracting Party exemption or remission of customs duty, inspection fees or similar charges unless such other Contracting Party grants exemption or remission of such charges to the designated airlines of the first Contracting Party.
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 such territory.

5. Materials referred to in paragraph 1, 2 and 4 of this Article may be required to be kept under Customs supervision or control.

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

ARTICLE 7

REPRESENTATION

1. The designated airlines of each Contracting Party shall have the right to establish and maintain in the territory of the other State a representation, with its own or local technical and commercial personnel for the performance of the agreed services on the specified routes. Such representation shall be established in accordance with local procedures.

2. The competent bodies of each Contracting Party shall give the necessary support to the good functioning of the representation of the airlines designated by the other Contracting Party, for the purpose of operating the agreed services.

3. The designated airline of each Contracting Party shall have an equal opportunity to issue its own documents of carriage and to advertise and promote sales in the territory of the other State. Such sales may be effected against payment in local currency or any convertible currency and credit cards, either directly through their own sales offices or through sales and/or travel agencies, to any person, organization or body.

ARTICLE 8

APPLICABILITY 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 navigation, or operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated airline of the other 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 and mail, such as those regarding passports, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airlines of the other Contracting Party while they are within the said territory.

ARTICLE 9

CAPACITY/FREQUENCY OF SERVICES

1. There shall be fair and equal opportunity for the airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.
2. In operating the agreed services, the airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provides on the same route.
3. The capacity to be provided on the agreed services by the designated airlines shall bear a close relationship to the estimated air transport requirements of the travelling public between the territories of the Contracting Parties.
4. Based upon the principles enshrined in the preceding paragraphs, the capacity to be provided and the frequency of services to be operated by the designated airlines of each Contracting Party shall be agreed between the aeronautical authorities of the two Contracting Parties.
5. Any increase in the capacity to be provided and/or frequency of services to be operated by the designated airline of either Contracting Party shall be based primarily on the increased requirements of traffic between the territories of the Contracting Parties and shall be subject to agreement between the two aeronautical authorities. Pending such agreement or settlement, the capacity and frequency entitlements already in force shall prevail.

ARTICLE 10

PROVISION OF OPERATING INFORMATION

1. The aeronautical authorities of each Contracting Party shall cause their designated airline (s) to file with the aeronautical authorities of the other Contracting Party, for the consideration and approval at least sixty days prior to the inauguration of the agreed services, information relating to the type of service and its frequency, the type of aircraft to be used and the flight schedules. Similar information shall also be supplied at least thirty (30) days in advance as and when any changes are to be introduced regarding operation of the agreed services.
2. The designated airlines shall also furnish any other information as may be required to satisfy the aeronautical authorities of the other Party that the requirements of the Agreement are being duly observed.

ARTICLE 11

PROVISION OF STATISTICS

The aeronautical authorities of each Contracting Party shall cause their designated airlines to furnish to the aeronautical authorities of the other Contracting Party statistics relating to the traffic carried during each month on the agreed services to and from the territory of that other Contracting 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.

ARTICLE 12

TARIFFS

1. For the purpose of the following paragraphs, the term "tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.
2. The tariffs to be charged by the designated airlines of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, including cost of operation, reasonable profit, and the tariffs of other airlines.
3. The tariffs referred to in paragraph 2 of this Article, shall, if possible, be agreed between the designated airlines of the two Contracting Parties, and such agreement shall, wherever possible be reached using the procedures of the International Air Transport Association.
4. The tariffs so agreed shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least ninety (90) days before the proposed date of their introduction. In special cases, this period may be reduced, subject to the agreement of the said authorities.
5. This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission, in accordance with paragraph 4 of this Article, those tariffs shall be considered as approved. In the event of the period for submission being reduced, as provided for in paragraph 4 the aeronautical authorities may agree that the period within which any disapproval must be notified shall be less than thirty (30) days.
6. If a tariff cannot be agreed in accordance with paragraph 3 of this Article, or if, during the period applicable in accordance with paragraph 5 the aeronautical authorities of

one Contracting Party give the aeronautical authorities of the other Contracting Party notice of disapproval of a tariff agreed in accordance with the provisions of paragraph 3, the aeronautical authorities of the two Contracting Parties shall endeavour to establish the tariff by mutual agreement.

7. If the aeronautical authorities cannot agree on any tariff submitted to them under paragraph 4 of this Article, or on the establishment of any tariff under paragraph 6, the dispute shall be settled in accordance with the provisions of Article 17 of this Agreement.

8. A tariff established in accordance with the provisions of this Article shall remain in force until a new tariff has been established. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which it would otherwise have expired.

ARTICLE 13

TRANSFER OF EARNINGS

1. Each Contracting Party grants to the designated airline of the other Contracting Party the right to remit to its head office, the excess/over expenditure of receipts earned in the territory of the first Contracting Party. Such remittances, however, shall be made in any convertible currency, and subject to, and in accordance with the foreign exchange regulations of the Contracting Party in the territory of which the revenue accrued.

2. Such transfers shall be effected on the basis of the official exchange rate for currency payment, or where there are no official exchange rates, at the prevailing foreign exchange market rates for currency payment.

3. In case special arrangements ruling the settlement of payments are in force between the two Contracting Parties, the provisions of such arrangements shall be applied to the transfer of funds under paragraph 1 of this Article.

ARTICLE 14

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 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.

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 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 on International Civil Aviation to the extent that such security provisions are applicable to the Parties, 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.

4. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding and loading. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for providing 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 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 Contracting Party shall take measures, as it may find practicable, to ensure that an aircraft subjected to an act of unlawful seizure or other acts of unlawful interference which has landed in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Wherever practicable, such measures shall be taken on the basis of mutual consultations.

7. Any departure from the provisions of this Article shall be dealt with in accordance with Article 15 and may constitute grounds for application of Article 4 of this Agreement.

ARTICLE 15**CONSULTATION**

In a spirit of close collaboration, the aeronautical authorities of the two Contracting Parties shall exchange views regularly on the application and interpretation of this Agreement.

ARTICLE 16**MODIFICATION**

1. If either of the Contracting Parties considers it desirable to modify any provision of this Agreement, it may request consultation with the other Contracting Party ; such consultation, which may be between aeronautical authorities and which may be through discussions or by correspondence, shall begin within a period of sixty (60) days of the date of the request. Any modifications so agreed shall come into force when they have been confirmed by an exchange of diplomatic notes.
2. Modifications to routes specified in the Annex may be made by direct agreement between the competent aeronautical authorities of the Contracting Parties and shall be confirmed by an exchange of letters.

ARTICLE 17**SETTLEMENTS OF DISPUTES**

If any dispute arises relating to the interpretation or application of this Agreement, the aeronautical authorities of the Contracting Parties shall endeavour to settle it by negotiations between themselves, failing which the dispute shall be referred to the Contracting Parties for settlement.

ARTICLE 18**APPLICABILITY OF MULTILATERAL AIR CONVENTIONS**

1. To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention shall remain in force in their present form

between the Contracting Parties for the duration of the Agreement, as if they were an integral part of the Agreement, unless both Contracting Parties ratify any amendment to the Convention, which shall have duly come into force, in which case the Convention as amended shall remain in force for the duration of this agreement.

2. If a general multilateral air convention comes into force in respect of both Contracting Parties, the provisions of such convention shall prevail.

ARTICLE 19

ANNEX

The Annex attached to this Agreement shall be deemed to be part of the Agreement and all references to the Agreement shall include references to the Annex, except where otherwise expressly provided.

ARTICLE 20

ENTRY INTO FORCE

This Agreement shall come into force on the date of signature.

ARTICLE 21

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 this Agreement shall terminate twelve months after the date when the notice has been received by the other Contracting Party unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen days after the receipt of the notice by the International Civil Aviation Organization.

Done at Kiev on this 7th day of July, 1995 in two originals each in Hindi, Ukrainian and English languages, all the texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
INDIA



(R.K. RAI)
AMBASSADOR OF INDIA
TO UKRAINE

FOR THE GOVERNMENT OF
UKRAINE



(M.O. MARCIIENKO)
CHAIRMAN OF THE STATE
DEPARTMENT OF AVIATION
TRANSPORT OF UKRAINE

ANNEX

Section I

The designated airlines of India shall be entitled to operate the agreed services on the following routes:

	Points of Origin	Intermediate Points	Points of Destination	Beyond Points
Route 1	Points in India	Moscow	Kiev	Moscow
Route 2	Points in India	Tashkent	Kiev	To be agreed at a later date

Section II

The designated airlines of Ukraine shall be entitled to operate the agreed services on the following routes:

	Points of Origin	Intermediate Points	Points of Destination	Beyond Points
Route 1	Points in Ukraine	Moscow	New Delhi	Moscow
Route 2	Points in Ukraine	Tehran	New Delhi	To be agreed at a later date

Notes :

- 1 The designated airlines of both Contracting Parties may on any or all flights omit calling at any of the intermediate points or beyond points provided that the agreed services on these routes begin at a point in the territory of the Contracting Parties.
- 2 The designated airlines of both Contracting Parties can operate round-robin coterminial services on their respective Route 1 without exercising fifth freedom traffic rights.
- 3 The designated airlines of both Contracting Parties shall be entitled to exercise fifth freedom traffic rights while operating services on their respective Route 2 only.