

**Air Services Agreement
between
the Portuguese Republic
and
the Republic of Kenya**

Preamble

The Portuguese Republic and the Republic of Kenya, hereinafter the "Parties",

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

Desiring to conclude an air services agreement, in conformity with and supplementary to the said Convention, for the purpose of establishing international scheduled air services between their respective territories;

Desiring to facilitate the expansion of international air services opportunities;

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

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

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely

affect the operation of air services, and undermine by consequence safety of civil aviation,

Have agreed as follows:

Article 1

Definitions

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

- a) "air transportation" means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- b) "aeronautical authorities" means, in the case of the Republic of Kenya, the Cabinet Secretary in charge of aviation; in the case of the Portuguese Republic, the Civil Aviation Authority; or in either case any other authority or person empowered to perform the functions now exercised by the said authorities;
- c) "Agreement" means this Agreement, its Annex, and any amendments thereto;
- d) "capacity" is the amount(s) of services provided under this Agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;
- e) "Convention" means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;
- f) "designated airline" means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

- g) "ICAO" means the International Civil Aviation Organization;
- h) "tariff" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- i) "territory" in relation to a State has the meaning assigned to it in Article 2 of the Convention;
- j) "user charges" means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo;
- k) "air service", "international air service", "airline" and "stop for non-traffic purposes", have the meanings assigned to them in Article 96 of the Convention; and
- l) "EU Treaties" shall mean the Treaty on European Union and the Treaty on the Functioning of the European Union.

Article 2

Grant of rights

1. Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedules.
2. Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:
 - a) the right to fly without landing across the territory of the other Party;
 - b) the right to make stops in the territory of the other Party for non-traffic purposes; and

c) the right to make stops at the point(s) on the route(s) specified in the Route Schedules to this Agreement for the purpose of taking on board and discharging international traffic in passengers, baggage, cargo and mail separately or in combination for remuneration or hire.

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

4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, baggage, cargo and mail for remuneration or hire and destined for another point in the territory of the other Party.

Article 3

Designation and authorization

1. Each Party shall have the right to designate in writing through diplomatic channels to the other Party one or more airline(s) to operate the agreed services on the specified routes and to withdraw or alter such designation, in accordance with this Agreement.

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

a) In the case of an airline designated by the Portuguese Republic:

i) It is established in the territory of the Portuguese Republic under the EU Treaties and has a valid Operating Licence in accordance with the law of the European Union; and

ii) Effective regulatory control of the airline is exercised and maintained by the EU Member State responsible for issuing its Air Operator's Certificate

and the relevant aeronautical authority is clearly identified in the designation; and

iii) The airline is owned, directly or through majority ownership, and it is effectively controlled by Member States of the EU or the European Free Trade Association and/or by nationals of such States.

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

i) Substantial ownership and effective control is vested in the Republic of Kenya, its nationals, or both;

ii) The designated airline meets other conditions prescribed under the legislation and procedures normally applied in conformity with the provisions of the Convention to the operation of international air services by the Party receiving the designation.

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

Article 4

Withholding, revocation and limitation of authorization

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

a) In the case of an airline designated by the Portuguese Republic:

i) It is not established in the territory of the Portuguese Republic under the EU Treaties or does not have a valid Operating Licence in accordance with the law of the European Union; or

ii) Effective regulatory control of the designated airline is not exercised or not maintained by the EU Member State responsible for issuing its Air Operator's Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

iii) The airline is not owned, directly or through majority ownership, or it is not effectively controlled by Member States of the EU or the European Free Trade Association and/or by nationals of such States.

b) In the case of an airline designated by the Republic of Kenya its substantial ownership and effective control is not vested in the Republic of Kenya, its nationals, or both;

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

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

2. Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles 8 or 9, the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article 18 (Consultations) of this Agreement.

Article 5

Application of legislation and procedures

1. The legislation and procedures of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the

operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.

2. The legislation and procedures of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.

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

Article 6

Direct transit

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

Article 7

Recognition of certificates

1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid, in accordance with the laws and regulations of one Party, including, in the case of the Portuguese Republic, European Union legislation

and procedures, and still in force, shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.

2. If the privileges or conditions of the licenses or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.

3. Paragraph 1 also applies with respect to an airline designated by the Portuguese Republic whose regulatory control is exercised and maintained by another European Union Member State.

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

Article 8

Safety

1. Each Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Party. Such consultations shall take place within thirty (30) days of that request.

2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in any such area that 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, and that other Party shall take appropriate corrective action. Failure by the other Party to take appropriate action within fifteen (15) days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement.

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

4. If any such ramp inspection or series of ramp inspections gives rise to serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or serious concerns that 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 inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

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

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

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

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

Article 9

Aviation security

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of:

a) the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963;

b) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;

c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving

International Civil Aviation, signed at Montreal on 24 February 1988; and
d) the Convention on the Marking of Plastic Explosives for the Purpose of
Detection, done at Montreal on 1 March 1991,

as well as with any other convention and protocol relating to the security of
civil aviation which both Parties adhere to.

2. The Parties shall provide, upon request, all necessary assistance to each
other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts
against the safety of such aircraft, their passengers and crew, airports and air
navigation facilities, and any other threat to the security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation
security provisions established by ICAO and designated as Annexes to the
Convention; they shall require that operators of aircraft of their registry or
operators of aircraft who have their principal place of business or permanent
residence in their territory or, in the case of the Portuguese Republic, operators
of aircraft who are established in its territory under EU Treaties and have valid
Operating Licences, in accordance with EU law, and the operators of airports in
their territory act in conformity with such aviation security provisions. Each Party
shall advise the other Party of any difference between its national regulations
and practices and the aviation security standards of the Annexes. Either Party
may request immediate consultations with the other Party at any time to discuss
any such differences.

4. Each Party agrees that such operators of aircraft shall be required to
observe the aviation security provisions referred to in paragraph 3 above
required by the other Party for entry into, departure from, or while within, the
territory of that other Party. Each Party shall ensure that adequate measures
are effectively applied within its territory to protect the aircraft and to inspect
passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to
and during boarding or loading. Each Party shall also give sympathetic
consideration to any request from the other Party for reasonable special security

measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

Article 10

User charges

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

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

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the

principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 19 (Settlement of Disputes), to be in breach of a provision of this Article, unless:

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

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

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

Article 11

Exemption from customs duties and other charges

1. Aircraft operating on international air services by the designated airline of either Party, as well as their regular equipment, spare parts, supplies of fuels and lubricants, other consumable technical supplies and aircraft stores (including food, beverages and tobacco) on board such aircraft shall be exempt from all customs duties, inspection fees and other similar charges on arriving in the territory of the other Party, provided such equipment, supplies and aircraft stores remain on board the aircraft up to such time as they are re-exported, or are used on the part of the journey performed over that territory.

2. There shall also be exempt from the same duties, fees and taxes, with the exception of charges corresponding to the services performed for:

a) aircraft stores taken on board in the territory of a Party, within limits fixed by the authorities of the said Party, and for use on board outbound aircraft engaged in an International air service by the designated airlines of the other Party;

b) spare parts and regular equipment brought into the territory of either Party for the maintenance or repairs of aircraft used on international air services by the designated airlines of the other Party;

c) fuel, lubricants and other consumable technical supplies destined to the supply outbound aircraft operated on international air services by the designated airlines of the other Party, even when these supplies are to be used on the part of the journey performed over the territory of the Party in which they are taken aboard.

3. All materials referred to in paragraph 2 of this Article may be required to be kept under customs supervision or control.

4. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft operated by the designated airline 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 cases, they may be placed under the supervision of the said customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

5. The exemptions provided for by this Article shall also be available in situations where the designated airlines of either Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such exemptions from such other Party.

6. Nothing in this Agreement shall prevent the Portuguese Republic from imposing, on a non-discriminatory basis, taxes, levies, duties, fees or charges on fuel supplied in its territory for use in an aircraft of a designated airline of the Republic of Kenya that operates between a point in the territory of the Portuguese Republic and another point in the territory of the Portuguese Republic or in the territory of another European Union Member State.

Article 12

Principles governing the operation of the agreed services

1. The designated airline(s) of the two Parties shall be afforded fair and equal opportunity in the operation of the agreed services on the specified routes between their respective territories.
2. The agreed services provided by the designated airlines of both Parties shall strive to meet the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision of capacity adequate to carry the current and reasonably anticipated traffic requirements, including seasonal variations for the carriage of traffic embarked and disembarked in the territory of the Party which has designated the airlines.
3. The frequency and capacity to be provided for the carriage between the territories of the Parties shall be notified to the aeronautical authorities of both Parties.
4. Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airline shall be agreed between the two Parties since capacity is related to:
 - a) traffic requirements to and from the territory of the Party, which has designated the airline;
 - b) traffic requirements of the area through which the agreed service passes,

after taking into account of other transport services established by airlines of the States comprising the area;

c) the requirements of through airline operation.

Article 13

Establishment of tariffs

1. Each Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.

2. Each Party may require notification to or filing with its aeronautical authorities of tariffs to be charged to or from its territory by airlines of the other Party. Such notification or filing by the airlines of both Parties may be required to be made no later than the initial offering of a price.

3. Without prejudice to the applicable competition and consumer protection laws prevailing in each Party, neither Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Party in connection with the international air services provided for under this Agreement. Intervention, as described in paragraph 4 below, by the Parties shall be limited to:

- a) Prevention of unreasonably discriminatory prices or practices;
- b) Protection of consumers from prices that is unreasonably high or restrictive due to the abuse of a dominant position or due to concerted practice among airlines;
- c) Protection of airlines from prices that are artificially low due to direct or indirect subsidy or support;
- d) Protection of airlines from prices that is artificially low, where evidence exists as to an intent to eliminate competition.

4. Without prejudice to the provisions of paragraph 3 of this Article, the aeronautical authorities of either Party may expressly disapprove tariff submitted by the designated airlines of the other Party, where such aeronautical authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph 3.a), 3.b), 3.c) or 3.d). In such event, the concerned aeronautical authority:

- a) Shall send notification of its dissatisfaction to the aeronautical authorities of the other Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and
- b) May request consultations in accordance with the procedures established under paragraph 5 of this Article. Unless both aeronautical authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.

5. The aeronautical authorities of each Party may request consultations with the aeronautical authorities of the other Party on any tariff charged by an airline of the other Party for international air services to or from the territory of the first Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The aeronautical authorities of both Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the aeronautical authorities of each Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.

6. Notwithstanding the paragraphs above, the tariffs to be charged by the designated airlines of the Republic of Kenya for carriage wholly within the European Union shall be subject to European Union law.

Article 14

Currency conversion and remittance of earnings

1. Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance, and in accordance with the applicable domestic law in the territory of the Party from which the transfer is made.
2. For the purpose of this Article, the applicable domestic law of the Portuguese Republic includes all measures taken by the European Union.

Article 15

Sale and marketing of air service products

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

Article 16

Provision of statistics

The aeronautical authorities of each Party shall provide or cause its designated airline or airlines to provide the aeronautical authorities of the other Party, upon request, periodic or other statements of statistics relating to the traffic carried on the agreed services.

Article 17

Approval of schedules

1. The designated airline of each Party shall notify its envisaged flight schedules and in general the conditions of their operation to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to significant modifications thereof. In special cases, the above set time limit may be reduced subject to the agreement of the said authorities.
2. For minor modifications or in case of supplementary flights, the designated airlines of one Party shall notify the aeronautical authorities of the other Party, at least five-working days before their intended operation. In special cases, this time limit may be reduced subject to agreement of the said authorities.

Article 18

Consultations

1. In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement.
2. Such consultations shall begin within a period of forty five (45) days from the date the other Party has received the written request.

Article 19

Settlement of disputes

1. If any dispute arises between the Parties relating to the interpretation or application of this Agreement, the Parties shall in the first place endeavor to settle it by negotiation.

2. If the Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall, at the request of either Party, be submitted for decision to a tribunal of three arbitrators one to be nominated by each Party and the third to be appointed by the two so nominated.

Each of the Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal and the third arbitrator shall be appointed within a further period of sixty (60) days.

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

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

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

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

6. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.

Article 20 Amendment

1. If either Party considers it desirable to amend any provision of this Agreement, it may at any time request negotiations to the other Party. Such negotiations shall begin within a period of sixty (60) days from the date the other Party has received the written request.

2. This Agreement shall be amended through an exchange of diplomatic notes and the amendments shall enter into force according to what is established in Article 24.

3. Notwithstanding the provisions of paragraph 2 of this Article any amendment of the Annex shall be agreed upon by the aeronautical authorities of the Parties, through an exchange of diplomatic notes and shall come into force on a date to be determined in the notes.

Article 21

Multilateral agreements

Any multilateral air transport conventions or agreements coming into force in respect of both Parties shall be deemed to prevail over the present Agreement and its Annex.

Article 22

Duration and termination

1. This Agreement shall remain in force for an undetermined period.
2. Each Party may, at any time, give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement. Such notice shall simultaneously be communicated to the International Civil Aviation Organization.
3. The Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Party, unless the notice to terminate is withdrawn by mutual agreement before the expiry of this period.
4. In case of failure of information to the other Party of the receipt of the notification, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organization.

Article 23

Registration with ICAO

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

Article 24
Entry into force

This Agreement shall enter into force thirty (30) days after the date of the receipt of the last notification through the exchange of diplomatic notes by one Party to the other Party that it has completed the internal legal procedures necessary in accordance with its legislation and procedures for the entry into force of this Agreement.

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

Done at Lisbon, this 28th day of June in the year 2022, in two originals in Portuguese and English languages, all texts being equally authentic.

For
the Portuguese Republic

João Gomes Cravinho
Minister of Foreign Affairs

For
the Republic of Kenya

Amb. Raychelle A. Omamo, EGH,SC
Cabinet Secretary
Ministry of Foreign Affairs

Annex I
Route schedules

Section 1

Airline(s) of each Party designated under this Agreement shall be entitled to provide air transportation between points on the following routes:

A. Routes to be operated by the designated airline(s) of Kenya:

Points in Kenya	Intermediate Points	Points in Portugal	Beyond Points
Any points	Any points	Any points	Any points

B. Routes to be operated in both directions by the designated airline(s) of Portugal:

Points in Portugal	Intermediate Points	Points in Kenya	Beyond Points
Any points	Any points	Any points	Any points

Section 2

Notes

1. The intermediate and beyond points to be operated by the designated airlines of each Party have to be agreed upon directly between the aeronautical authorities of the two Parties.
2. The designated airlines of each Party may on any or all flights omit calling at any of the intermediate and/or beyond points mentioned above, provided that the agreed services on the routes begin or end in the territory of the Party which has designated the airlines.
3. The designated airlines of each Party may select any intermediate and/or beyond points at its own choice and may change its selection in the next season on condition that no traffic rights are exercised between those points and the territory of the other Party.
4. The exercise of the fifth freedom traffic rights on specified intermediate and/or beyond points shall be subject to agreement between the aeronautical authorities of both Parties.