

AIR SERVICES AGREEMENT

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE STATE OF KUWAIT

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**AIR SERVICES AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE STATE OF KUWAIT**

The Government of the State of Kuwait and the Government of Australia hereinafter called the Contracting Parties,

Desiring to foster the development of Air Services between the State of Kuwait and Australia and to promote in the greatest possible measure international co-operation in this field,

Being parties to the Convention on International Civil Aviation and of the International Air Services Transit Agreement opened for signature at Chicago on the seventh day of December 1944, and desiring to apply these principles and provisions to air services between the State of Kuwait and Australia,

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

Have agreed as follows:

Article 1

DEFINITIONS

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

- a) **"The Convention"** means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, and includes any annex adopted under Article (90) of that Convention and any amendment of the Annexes or Convention under Articles (90) and (94) thereof so far as these Annexes and amendments have been adopted by both Contracting Parties;
- b) **"Air Transportation"** means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;
- c) **"Agreement"** means this Agreement, the Annex attached thereto, and any amendments to the Agreement or to the Annex;
- d) **"Aeronautical Authorities"** means in the case of the State of Kuwait, the Directorate General of Civil Aviation, in the case of Australia, the Australian Government Department of Infrastructure and Transport, or in both cases any other person or agency authorised to perform the functions exercised at present by the said authorities;
- e) **"Agreed Services"** means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers, cargo and mail in accordance with agreed capacity entitlements;
- f) **"Designated Airline"** means any airline that one Contracting Party has designated in writing to the other Contracting Party in accordance with Article (4) of this Agreement as being an airline which is to operate the agreed services on the routes specified in accordance with Article (3) of this Agreement;
- g) **"Air Service" "International Air Service" "Stop For Non Traffic Purposes"** and **"Airline"** shall for the purpose of this Agreement, have the meaning laid down in Article (96) of the Convention;
- h) **"Territory"** in relation to a State, has the meaning assigned to it in Article (2) of the Convention;
- i) **"Tariff"** means the prices to be paid for the carriage of passengers, baggage and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail;

- j) **"Route Schedule"** means the Route Schedule annexed to this Agreement or as amended in accordance with the provisions of Article (17) of this Agreement.
- k) **"User Charge"** means a charge made to airlines for the provision of airport, air navigation or aviation security property, or facilities.

Article 2
APPLICABILITY OF THE CONVENTION

The provisions of this Agreement shall be subject to the provisions of the Convention insofar as those provisions are applicable to international air services.

Article 3
GRANTING OF RIGHTS AND PRIVILEGES

- 1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.
- 2) Subject to the provisions of this Agreement, the airline or airlines designated by each Contracting Party shall enjoy the following rights:
 - a) The right to fly without landing across the territory of the other Contracting Party;
 - b) The right to make stops in the territory of the other Contracting Party for non-traffic purposes;
 - c) The right to make stops in the territory of the other Contracting Party for the purpose of taking on board and discharging passenger, cargo and mail; and
 - d) The rights otherwise specified in this Agreement.
- 3) The airlines of each Contracting Party, other than those designated under Article (4) of this Agreement, shall also enjoy the rights specified in paragraphs 2(a) and 2(b) of this Article.
- 4) Nothing in this Article shall be deemed to confer on the designated airline or airlines of one Contracting Party the rights to uplift and discharge between points in the territory of the other Contracting Party, passengers, their baggage, cargo, or mail carried for compensation.

Article 4
DESIGNATION AND AUTHORISATION

- 1) Each Contracting Party shall have the right to designate in writing through diplomatic channels to the other Contracting Party one or more airlines to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Designation shall not be required for airlines exercising the rights provided for in Article (3), paragraphs 2(a) and 2(b), of this Agreement.

- 2) On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorisation and technical permission, each Contracting Party shall grant the appropriate operating authorisation with minimum procedural delay to exercise the rights specified in Article (3) of this Agreement, provided that:
 - a) The airline is incorporated and has its principal place of business in the territory of the Contracting Party designating the airline;
 - b) The Contracting Party designating the airline has and maintains effective regulatory control of the airline;
 - c) The Contracting Party designating the airline is in compliance with the provisions set forth in Article (15) and Article (16); and
 - d) The designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Contracting Party receiving the designation.

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

Article 5
REVOCATION, LIMITATION AND IMPOSITION OF
CONDITIONS

- 1) The Aeronautical Authorities of each Contracting Party shall have the right to withhold the authorisations referred to in paragraph (1) of Article (4) of this Agreement with respect to an airline designated by the other Contracting Party, and to revoke, suspend or impose conditions on such authorisations, temporarily or permanently when:
 - a) The airline fails to maintain its principal place of business in the territory of the Contracting Party designating the airline;
 - b) The Contracting Party designating the airline fails to maintain effective regulatory control of the airline;
 - c) In the event of failure of the Contracting Party designating the airline to comply with the provisions set forth in Article (15) and Article (16); and/or
 - d) In the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Contracting 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 (15) or (16), the rights enumerated in paragraph (1) of this Article shall be exercised only after consultations between the Aeronautical Authorities in conformity with Article (17) of this Agreement.

Article 6
USER CHARGES

- 1) Each Contracting Party shall use its best efforts to encourage those responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services to levy charges on the designated airline or airlines of either Contracting Party only on the basis that they are reasonable, non-discriminatory, and equitably apportioned amongst users.
- 2) Reasonable charges reflect, but do not exceed, the full cost to the competent charging authorities of providing the facilities and services. This may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made should be provided on an efficient and economic basis. For charges to be non-discriminatory, they should be levied on foreign airlines at a rate no higher than the rate imposed on a Contracting Party's own airlines operating similar international services.
- 3) Each Contracting Party shall encourage consultations on user charges between its competent charging authorities and airlines using the service and facilities provided by those charging authorities or service provider, where practicable through those airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authority or service provider and such users to exchange appropriate information concerning user charges.

Article 7
EXEMPTIONS FROM CUSTOM DUTIES
AND OTHER CHARGES

- 1) Aircraft operated in international air transportation by the airlines of each Contracting Party shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities. Component parts, normal aircraft equipment and other items intended for or used solely in connection with the operation or for the repair, maintenance and servicing of such aircraft shall be similarly exempt, provided such equipment and items are for use on board an aircraft and are re-exported.

- 2)
 - a) Provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transportation by the airline concerned, the following items shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Contracting Party into the territory of the other Contracting Party or supplied to an airline of one Contracting Party in the territory of the other Contracting Party:
 - i. aircraft stores (including but not limited to such items as food, beverages and products destined for sale to, or use by, passengers during flight);
 - ii. fuel, lubricants (including hydraulic fluids) and consumable technical supplies; and
 - iii. spare parts including engines.

 - b) These exemptions shall apply even when these items are to be used on any part of a journey performed over the territory of the other Contracting Party in which they have been taken on board.

- 3) Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept on board the aircraft, or under the supervision or control of the appropriate authorities until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Contracting Party.

- 4) The exemptions provided by this Article shall not extend to charges based on the cost of services provided to the airlines of a Contracting Party in the territory of the other Contracting Party.
- 5) The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraphs 1 and 2 of this Article retained on board the aircraft operated by the airlines of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. Aircraft stores intended for use on the airlines' services may, in any case be unloaded.
- 6) The exemptions provided for by this Article shall also be available in situations where the airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such relief from the other Contracting Party.

Article 8
FINANCIAL PROVISIONS

The designated airlines of each Contracting Party shall have the right to sell air transportation, and any person shall be free to purchase such transportation, in local or freely convertible currencies. Each airline shall have the right to convert their funds into any freely convertible currency and to transfer them (including any interest earned on deposit awaiting remittance) from the territory of the other Contracting Party at will. Subject to the national laws and regulations and policy of the other Contracting Party, conversion and transfer of funds obtained in the ordinary course of their operations shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions. Whenever the payments system between the Contracting Parties is governed by a special agreement, that agreement shall apply.

Article 9
TECHNICAL AND COMMERCIAL REPRESENTATION

- 1) The designated airline or airlines of one Contracting Party shall have the right to maintain its own representation in the territory of the other Contracting Party.
- 2) The designated airline or airlines of one Contracting Party may, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence and employment, bring in and maintain in the territory of the other Contracting Party managerial sales, technical, operational and other specialist staff required for the provision of air services.
- 3) Subject to the exclusion in paragraph (4) herein, the designated airline or airlines of each Contracting Party shall have the right to use the services and personnel of any other organisation, company or airline operating in the territory of the other Contracting Party.
- 4) In case of nomination of a general agent or general sales agent, this agent shall be appointed in accordance with the relevant applicable laws and regulations of each Contracting Party.
- 5) In accordance with the applicable national laws and regulations of each Contracting Party, each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly or through its agents and any person shall be able to purchase such transportation.

Article 10
ENTRY AND CLEARANCE REGULATIONS

- 1) The laws, rules and regulations in force for each Contracting Party relating to entry into or departure from its territory of passengers, crew, cargo and mail of aircraft (such as regulations relating to entry, clearance, immigration, passports, advance passenger information, customs and quarantine) shall be applicable to the passengers, crew, cargo and mail of the aircraft of an airline designated by the other Contracting Party while in the territory of the first Contracting Party.

- 2) The laws and regulations of a Contracting Party relating to the admission to, stay in, or departure from its territory of aircraft engaged in international air transportation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of both Contracting Parties without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that Contracting Party.

Article 11
CAPACITY PROVISIONS

- 1) The designated airlines of each Contracting Party shall have a fair and equal opportunity to compete in providing the international air transportation governed by this Agreement.
- 2) Each Contracting Party shall take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Contracting Party.
- 3) In the operation of the agreed services, the capacity which may be provided by the designated airlines of each Contracting Party shall be such as is decided between the Aeronautical Authorities of the Contracting Parties before the commencement of such services by the airlines concerned and from time to time thereafter.
- 4) Services provided by a designated airline under the Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the countries of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for or coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:
 - a) The traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
 - b) The requirements of through airline operations; and
 - c) The traffic requirements of the area through which the airline passes, after taking account of local and regional services.
- 5) Consultations between the Contracting Parties shall be arranged whenever a Contracting Party requests that the capacity provided under the Agreement be reviewed to ensure the application of the principles in the Agreement governing the conduct of the services.
- 6) Within the capacity constraints as decided from time to time in accordance with paragraph (3) of this Article, each Contracting

Party shall allow each designated airline to determine the frequency and capacity of the international air transport it offers, according to commercial and market-based considerations. Consistent with this right, neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other Contracting Party, except according to the terms of this Agreement or as may be required for customs, technical, operational or environmental reasons, under uniform conditions consistent with Article (15) of the Convention.

Article 12
TIMETABLE SUBMISSION AND SLOTS

- 1) Where required by the laws and regulations of a Contracting Party, the designated airlines of each Contracting Party shall submit their timetables not less than thirty-five (35) days prior to the commencement of services for approval by the aeronautical authorities of that Contracting Party. The application shall include the types of aircraft to be used. The same procedure shall apply to any modification thereof. The Aeronautical Authorities may consent to a shorter time period in special circumstances.
- 2) The Contracting Parties recognise that to give effect to the rights and entitlements embodied in the Agreement the airlines of each Contracting Party must have the opportunity to access airports in the territory of the other Contracting Party on a non-discriminatory basis.
- 3) In respect of the allocation and grant of slots to airlines at their national airports, each Contracting Party will in accordance with local slot allocation rules, procedures or practices which are in effect or otherwise permitted, ensure that the airlines of the other Contracting Party:
 - i. are permitted fair and equal opportunity to secure slots; and
 - ii. are afforded no less favourable treatment than any other airline in securing slots.
- 4) The terms of paragraph (3) of this Article will be subject to the provisions of any laws or regulations introduced by the Contracting Parties for the allocation of slots at their national airports.
- 5) In any case the designated airlines shall not commence their services before the slots are approved by the relevant authorities concerned. This provision shall likewise apply to later changes.

Article 13
INFORMATION AND STATISTICS

- 1) The relevant authorities of either Contracting Party shall furnish to the Aeronautical Authorities of the other Contracting Party at their request such periodic or other statistical data as may be reasonably required for the purpose of reviewing the capacity provided by the designated airline or airlines of the first Contracting Party on the specified routes in accordance with Article (3) of this Agreement. Such data shall include all information required to determine the amount of traffic carried.
- 2) The Aeronautical Authorities of one Contracting Party may require a designated airline of the other Contracting Party to provide statements of statistics related to the traffic carried by that airline on services performed under this Agreement.
- 3) The Aeronautical Authorities of each Contracting Party may determine the nature of the statistics required to be provided by designated airlines under the above paragraph, and shall apply these requirements on a non-discriminatory basis.

Article 14
ESTABLISHMENT OF TARIFFS

- 1) Each Contracting Party shall allow tariffs for air services to be established by each designated airline based on commercial considerations in the market place, including the cost of operation, the characteristics of the service, the interests of users, a reasonable profit and other market considerations.
- 2) Unless required by national laws and regulations, tariffs charged by airline will not be required to be filed with the Aeronautical Authorities of either Contracting Party.
- 3) Without prejudice to the applicable competition and consumer protection laws prevailing in each Contracting Party, neither Contracting Party shall take unilateral action to prevent the commencement or continuation of a tariff proposed to be charged or charged by a designated airline of the other Contracting Party in connection with the international air transportation provided for under this Agreement. Intervention, as described in paragraph (4) below, by the Contracting Parties shall be limited to;
 - a) Prevention of unreasonably discriminatory prices or practices;
 - b) Protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position 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; or
 - d) Protection of airlines from prices that are 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 Contracting Party may not expressly disapprove tariffs submitted by the designated airlines of the other Contracting Party; where such Aeronautical Authorities find that a tariff proposed to be charged by such airlines falls within the categories set forth in paragraph (3) of this Article. In such event, the concerned Aeronautical Authority:
 - a) Shall send notification of its dissatisfaction to the Aeronautical Authorities of the other Contracting Party, and to the airline involved, as soon as possible, and in no event later than thirty (30) days after the date of notification or filing of the tariff in question; and

- b) May request consultations in accordance with the procedures established under paragraph (5) of this Article. Unless both Aeronautical Authorities have agreed to disapprove the tariff in question in writing, the tariff shall be treated as having been approved.
- 5) The Aeronautical Authorities of each Contracting Party may request consultations with the Aeronautical Authorities of the other Contracting Party on any tariff charged by a designated airline of the other Contracting Party for international air transportation to or from the territory of the first Contracting Party, including tariffs for which a notice of dissatisfaction has been given. These consultations shall be held no later than fifteen (15) days after receipt of the request. The Aeronautical Authorities of both Contracting Parties shall cooperate in securing the necessary information for a reasoned resolution of the issue. If an agreement is reached with respect to a tariff for which a notice of dissatisfaction has been given, the Aeronautical Authorities of each Contracting Party shall use their best efforts to put that agreement into effect. If such mutual agreement is not reached, the tariff shall go into effect or continue in effect.
- 6) The competition laws of each Contracting Party, as amended from time to time, shall apply to the operation of the airlines within the jurisdiction of the respective Contracting Party.

Article 15
AVIATION SAFETY

- 1) Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within thirty (30) days of that request.
- 2) If following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within fifteen (15) days or such longer period as may be agreed shall be grounds for the application of Article (5) of this Agreement.
- 3) Notwithstanding the obligations mentioned in Articles (16) and (33) of the Convention it is agreed that any aircraft operated by the airline or airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called "Ramp Inspection"), provided this does not lead to unreasonable delay.
- 4) If any ramp inspection or series of ramp inspections gives rise to:
 - a) Serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or
 - b) Serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Convention;The Contracting Party carrying out the inspection shall, for the purposes of Article (33) of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been

issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

- 5) In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by the airline or airlines of one Contracting Party in accordance with paragraph (3) of this Article above is denied by the representative of that airline, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (4) of this Article above arise and draw the conclusions referred in that paragraph.
- 6) Each Contracting Party reserves the right to suspend or vary the operating authorisation of an airline of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.
- 7) Any action by one Contracting Party in accordance with paragraphs (2) or (6) of this Article above shall be discontinued once the basis for the taking of that action ceases to exist.
- 8) Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Contracting Party, and still in force, shall be recognised as valid by the other Contracting Party for the purpose of operating services provided for in this Agreement, provided that the requirements under which such certificates or licences were issued or rendered valid are equal to or above the minimum standards which are or may be established pursuant to the Convention. Each Contracting Party reserves the right, however to refuse to recognise, for the purpose of flights above its own territory, certificates of competency and licences granted to its own operators or rendered valid for them by the other Contracting Party or by any other State.
- 9) If the privileges or condition of the licences or certificates referred to in paragraph (8) of this Article above, issued by the aeronautical authorities of one Contracting Party to any person or designated airline or airlines or in respect of an aircraft operating the agreed services on the specified routes would permit a difference from the standards established under the Convention, and which difference

has been filed with the International Civil Aviation Organization, the Aeronautical Authorities of the other Contracting Party may request consultations in accordance with Article (17) of this Agreement with the Aeronautical Authorities of that Contracting Party with a view to satisfying themselves that the practice in question is acceptable to them. Failure to reach a satisfactory agreement will constitute grounds for the application of Article (5) of this Agreement.

Article 16
AVIATION SECURITY

- 1) The Contracting Parties reaffirm, consistent with their rights and obligations under international law, that their obligations to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting 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 the 14th of September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on the 16th of December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on the 23rd of September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on the 24th of February 1988, the Convention on the Marking of Plastic Explosives for the Purposes of Detection signed at Montreal on the 1st of March 1991, and any other convention relating to aviation security to which the Contracting Parties shall become party.
- 2) The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.
- 3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security standards and, so far as they are applied by them, the Recommended Practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; and shall require that operators of aircraft of their registry, operators who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory, act in conformity with such aviation security provisions. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards established by the Convention. Either Contracting Party may request consultations with the other Contracting Party at any time to discuss any such differences.

- 4) Each Contracting Party shall ensure that effective measures are taken within its territory to protect aircraft, to screen passengers and their carry-on items, and to carry out appropriate checks on crew, cargo (including hold baggage) and aircraft stores prior to and during boarding or loading and that those measures are adjusted to meet the increase in the threat. Each Contracting Party agrees that its designated airline or airlines may be required to observe the aviation security provisions referred to in paragraph (3) required by the other Contracting Party for entrance into, departure from, or while within, the territory of that other Contracting Party. Each Contracting Party shall also act favourably upon any request from the other Contracting 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 Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate as rapidly as possible commensurate with minimum risk to life such incident or threat.
- 6) Each Contracting Party shall have the right, in the event that the designated airline or airlines of one Contracting Party commences operations of agreed services to the territory of the other Contracting Party, within sixty (60) days following notice (or such shorter period as may be agreed between the Aeronautical Authorities), for its Aeronautical Authorities to conduct an assessment in the territory of the other Contracting Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Contracting Party. The administrative arrangements for the conduct of such assessments shall be mutually determined by the Aeronautical Authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.
- 7) Each Contracting Party shall take such measures, as it may find practicable, to ensure that an aircraft subject 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.

- 8)** When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request immediate consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations, or such other period as may be agreed upon between the Contracting Parties, shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorisations of the airline or airlines designated by the other Contracting Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Contracting Party may take interim action at any time. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

Article 17
CONSULTATIONS AND MODIFICATIONS

- 1) Consultations shall take place as needed between the Aeronautical Authorities of the Contracting Parties in order to achieve closer cooperation and agreement in all matters pertaining to the application of this Agreement with priority given to in cases relating to Articles (14), (15) and (16).

- 2) Each Contracting Party may at any time request consultations with the other Contracting Party for the purpose of amending this Agreement, including the Annex. Subject to the provisions of Articles (14), (15) and (16), such consultations shall begin within a period of sixty (60) days from the date of receipt of such request. Any amendment to this Agreement agreed to as a result of such consultations shall be approved by each Contracting Party in accordance with its relevant domestic procedures and shall enter into force on the date of exchange of diplomatic notes indicating such approval.

Article 18
SETTLEMENT OF DISPUTES

- 1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, excluding the application of national competition laws, the Contracting Parties shall in the first place endeavour to settle it by negotiations between themselves.
- 2) If the Contracting Parties fail to reach within sixty (60) days a settlement by negotiations they shall refer the dispute for decision to a person or body or at the request of one of the Contracting Parties to an arbitration tribunal. The arbitration tribunal shall be composed as follows:
 - a) Each Contracting Party shall nominate an arbitrator; if one Contracting Party fails to nominate its arbitrator within sixty (60) days, such arbitrator shall be nominated by the President of the Council of the International Civil Aviation Organization at the request of the other Contracting Party.
 - b) The third arbitrator, who shall be a national of a third state and who shall preside over the arbitration tribunal, shall be nominated either,
 - i. By agreement between the Contracting Parties; or
 - ii. If within sixty (60) days the Contracting Parties do not so agree, by appointment of the President of the Council of the International Civil Aviation Organization by the request of either Contracting Party. If the President of the Council is of the same nationality as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.
- 3) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member as well as of its representation in the arbitral proceedings; the cost of the chairman and any other costs shall be borne in equal parts by the Contracting Parties. In all other respects, the arbitral tribunal shall have its own procedure.
- 4) The arbitral tribunal shall attempt to give a written decision within sixty (60) days after completion of the hearing or, if no hearing is held, sixty (60) days after the date both replies are submitted.

- 5) The decision of the arbitral tribunal shall be final and binding upon the parties to the dispute.
- 6) If and for so long as either Contracting Party fails to comply with a decision under paragraph (5) of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges under this Agreement.

Article 19
TERMINATION

Either Contracting Party may at any time notify the other Contracting Party in writing through diplomatic channels of its decision to terminate this Agreement. A copy of the notice shall be sent simultaneously to the Secretary General of the International Civil Aviation Organization. If such notice is given, this Agreement shall terminate twelve (12) months after the date of receipt by the other Contracting Party of the notice to terminate, unless by agreement between the Contracting Parties the notice under reference is withdrawn before the expiry of that period. If the other Contracting Party fails to acknowledge receipt, notice shall be deemed to have been received fourteen (14) days after the date of the receipt by the Secretary General of the International Civil Aviation Organization.

Article 20
CONFORMITY WITH MULTILATERAL CONVENTIONS

In the event of a general multilateral air transport convention entering into force in respect of both the Contracting Parties, the provisions of such convention shall prevail, to the extent of any inconsistent provision. Any discussions with a view to determining the extent to which this Agreement is terminated, superseded, amended or supplemented by the provisions of the multilateral convention, shall take place in accordance with paragraph (2) of Article (17) of this Agreement.

Article 21
REGISTRATION

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

Article 22
TITLES

Titles are inserted in this Agreement at the head of each Article for the purpose of reference and convenience and in no way to define, limit or describe the scope or intent of this Agreement.

Article 23
ENTRY INTO FORCE

This Agreement shall enter into force after the fulfilment of the national requirements by each Contracting Party, which shall notify each other of the fulfilment of such requirements through exchange of the diplomatic notes.

The Agreement shall come into force on the first day of the next month from the date of the receipt of the last notification.

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

Done at this day of
in two originals, each in the Arabic and English languages, all texts being equally authentic.

**For The Government
of Australia**

**For The Government
of The State of Kuwait**

Mr Stephen John Borthwick
General Manager
Aviation Industry Policy Branch
Department of Infrastructure and
Regional Development

Mr. Fawaz A. Al-Farah
President of Directorate General of
Civil Aviation
The State of Kuwait

ANNEX
ROUTE SCHEDULE

Section 1

Routes to be operated by the designated airline or airlines of the State of Kuwait:

FROM	INTERMEDIATE POINTS	TO	BEYOND POINTS
Any Points in Kuwait	Any Points	Any Points in Australia	Any Points

Section 2

Routes to be operated by the designated airline or airlines of Australia:

FROM	INTERMEDIATE POINTS	TO	BEYOND POINTS
Any Points in Australia	Any Points	Any Points in Kuwait	Any Points

NOTES:-

- 1) The designated airlines of each Contracting Party may at their option omit points on any of the above routes provided that, with the exception of all-cargo services, the services commence or terminate in the territory in which the airline concerned has its principal place of business.
- 2) The traffic rights which may be exercised by the designated airlines at intermediate and beyond points on the above routes shall be set out in Memorandums of Understanding or exchanges of letters between the Aeronautical Authorities of the Contracting Parties.
- 3) Between points in the territory of the other Contracting Party, the designated airlines of each Contracting Party may only exercise own stopover rights.
- 4) The designated airlines of each Contracting Party may, on any or all services and at the option of each airline:

- a) perform services in either or both directions;
 - b) combine different flight numbers within one aircraft operation;
 - c) transfer traffic from any aircraft to any other aircraft at any point on the route,
- without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.
- 5) On any sector or sectors of the routes in this Annex, any designated airline shall be entitled to perform international air transportation, including under code sharing arrangements with other airlines, without any limitation as to change at any point or points on the route, in the type, size or number of aircraft operated.