ASEAN MULTILATERAL AGREEMENT ON THE FULL LIBERALISATION OF AIR FREIGHT SERVICES

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic (hereinafter referred as "Lao PDR"), Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (ASEAN) (hereinafter collectively referred to as "Contracting Parties" or individually as "Contracting Party")

RECALLING the Declaration of ASEAN Concord II (Bali Concord II) issued in Bali, Indonesia on 7 October 2003, pursuant to which ASEAN is committed to deepen and broaden its internal economic integration and linkages with the world economy to realise an ASEAN Economic Community;

AFFIRMING the policy agenda for progressive implementation of full liberalisation and integration of air services in ASEAN as laid down in the Action Plan for ASEAN Air Transport Integration and Liberalisation adopted at the Tenth (10th) ASEAN Transport Ministers' (ATM) Meeting on 23 November 2004 in Phnom Penh, Cambodia;

RECALLING the Vientiane Action Programme adopted at the Tenth (10th) ASEAN Summit on 29 November 2004 in Vientiane, Lao PDR, which calls for accelerating open sky arrangements and advancing liberalisation in air transport services, especially air freight services;

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RECALLING also the decision of the Tenth (10th) ATM Meeting in Phnom Penh, Cambodia, on 23 November 2004 to adopt the Roadmap for Integration of Air Travel Sector and the Action Plan for ASEAN Air Transport Integration and Liberalisation 2005-2015, which provides strategic actions to further liberalise air services in ASEAN and promotes an enabling environment for a single and unified aviation market in ASEAN;

BEING committed to maintain, further develop and strengthen friendly relations and cooperation between and among their countries;

RECOGNISING that efficient and competitive international air freight services are important to develop trade, benefit consumers, and promote economic growth;

DESIRING to ensure the highest degree of safety and security in international air transport and reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation;

DESIRING to facilitate and enhance air freight services and their related activities, to complement the other transport facilitation and liberalisation efforts in ASEAN;

DESIRING to remove restrictions, on a gradual basis, so as to achieve greater flexibility and capacity in the operation of air freight services in ASEAN with a view to build a single unified aviation market of ASEAN by 2015;

BEING Parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and desiring to adhere to the principles and provisions of the aforesaid Convention; and

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DESIRING to conclude a Multilateral Agreement on the Full Liberalisation of Air Freight Services

HAVE AGREED AS FOLLOWS:

ARTICLE 1
DEFINITIONS

For the purpose of this Agreement only, unless the context otherwise requires:

1. The term "the Convention" means the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944, and includes: (i) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by all the Contracting Parties to this Agreement, and (ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annexes or amendments are, at any given time, effective for all the Contracting Parties to this Agreement;

2. The term "aeronautical authority" means the Minister responsible for Civil Aviation, or any person or body authorised to perform any functions at present exercisable by him or similar functions;

3. The term "designated airline" means an airline which has been designated and authorised in accordance with Article 3 (Designation and Authorisation of Airlines) of this Agreement;

4. The term "territory" means the land territory, internal waters, territorial sea, archipelagic waters, the seabed and the sub-soil thereof and the airspace above them;

5. The terms "air service", "international air service", and "airline", have the meanings respectively assigned to them in Article 96 of the Convention;

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6. The term "international air freight services" means all cargo air transportation that passes through the airspace over the territory of more than one ASEAN Member State ;

7. The term "tariff" means any fare, rate or charge for the carriage of cargo (excluding mail) in air transportation charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;

8. The term "agreed services" means scheduled air freight services performed for the carriage of cargo and/or mail for remuneration or hire on the specified routes;

9. The term "stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging cargo and/or mail in international air freight services;

10. The term "user charges" means a charge imposed on airlines by the competent authorities, or permitted by them to be imposed, for the provision of airport property or facilities or of air navigation facilities, including related services and facilities for aircraft, their crew and cargo;

11. The term "Agreement" means this Agreement, and its Implementing Protocols and any amendments thereto;

12. The term "Depository" means the Secretary-General of ASEAN; and

13. All references to the singular shall include the plural, and all references to the plural shall include the singular.

ARTICLE 2
GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Parties the following rights for the conduct of international air freight services by the designated airlines of the other Contracting Parties:

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a) the right to fly across its territory without landing;

b) the right to make stops in its territory for non-traffic purposes; and

c) the rights otherwise specified in this Agreement, including those rights stated in the Implementing Protocols 1 and 2 of this Agreement.

2. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Contracting Party the right to take on board, in the territory of another Contracting Party, cargo or mail carried for remuneration and destined for another point in the territory of that other Contracting Party.

ARTICLE 3
DESIGNATION AND AUTHORISATION OF AIRLINES

1. Each Contracting Party shall have the right to designate as many airlines as it wishes for the purpose of conducting international air freight services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted in writing through diplomatic channels to the Depository who shall subsequently inform all the Contracting Parties.

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 authorisation and technical permission with minimum procedural delay, provided that:

a) (i) substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline, nationals of that Contracting Party, or both; or

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(ii) subject to acceptance by a Contracting Party receiving such application, the designated airline which is incorporated and has its principal place of business in the territory of the Contracting Party that designates the airline, is and remains substantially owned and effectively controlled by one or more ASEAN Member States and/or its nationals, and the Contracting Party designating the airline has and maintains effective regulatory control; or

(iii) subject to acceptance by a Contracting Party receiving such application, the designated airline is incorporated in and has its principal place of business in the territory of the Contracting Party that designates the airline and the Contracting Party designating the airline has and maintains effective regulatory control of that airline, provided that such arrangements will not be equivalent to allowing airline(s) or its subsidiaries access to traffic rights not otherwise available to that airline(s); and

b) the designated airline is qualified to meet other conditions prescribed under the laws, regulations and rules normally applied to the operation of international air freight services by the Contracting Party considering the application or applications; and

c) the Contracting Party designating the airline is in compliance with the provisions set forth in Article 5 (Safety) and Article 6 (Aviation Security) of this Agreement.

3. The Contracting Parties granting operating authorisations in accordance with paragraph 2 of this Article shall notify such action to the Depository who shall subsequently inform all the Contracting Parties.

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ARTICLE 4
WITHHOLDING, REVOCATION, SUSPENSION AND LIMITATION OF AUTHORISATION

1. Each Contracting Party shall have the right to withhold, revoke, suspend, impose conditions on or limit the operating authorisations or technical permission referred to in Article 3 (Designation and Authorisation of Airlines) of this Agreement with respect to an airline designated by another Contracting Party, temporarily or permanently where:

a) the airline has failed to prove that it is qualified under Article 3 paragraphs 2 (a) (i) or (ii) or (iii) as applicable; or

b) the airline has failed to comply with laws, regulations, and rules referred to in Article 15 (Application of Laws and Regulations) of this Agreement; or

c) the other Contracting Party is not maintaining and administering the standards as set forth in Article 5 (Safety) of this Agreement.

2. Unless immediate action is essential to prevent further non-compliance with paragraphs 1(b) or 1(c) of this Article, the rights established by this Article shall be exercised only after consultations with the Contracting Party designating the airline, in accordance with the provisions set forth in Article 17 (Consultations and Amendment).

3. A Contracting Party that has exercised its right to withhold, revoke, suspend, impose conditions on or limit the operating authorisations or technical permission of an airline or airlines in accordance with paragraph 1 of this Article shall notify its action to the Depository and the Depository shall subsequently inform all the Contracting Parties.

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4. This Article does not limit the rights of any Contracting Party to withhold, revoke, suspend, impose conditions on or limit the operating authorisations or technical permission of an airline or airlines of the other Contracting Parties in accordance with the provisions of Article 6 (Aviation Security).

ARTICLE 5
SAFETY

1. Each Contracting Party shall recognise as valid, for the purpose of operating the air freight services provided for in this Agreement, certificates of airworthiness, certificates of competency, and licences of a designated airline issued, or validated by the Contracting Party that designates that said airline, and still in force, provided that the requirements for such certificates or licences are at least equal to the minimum standards which may be established pursuant to the Convention. Each Contracting Party reserves the right, however, to refuse to recognise as valid for the purpose of flight above its own territory, certificates of competency and licences granted to or validated for its own nationals by another Contracting Party.

2. Each Contracting Party may request consultations concerning the safety and security standards maintained by another Contracting Party relating to aeronautical facilities, air crew, aircraft, and operation of that other Contracting Party's designated airline(s). If, following such consultations, the first Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety and security standards and requirements in these areas that are at least equal to the minimum standards which may be established pursuant to the Convention, the other Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards; and the other Contracting Party shall take appropriate corrective action. Each Contracting Party reserves the right to withhold, revoke, suspend, impose conditions on or limit the operating authorisation or technical

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permission of an airline or airlines designated by the other Contracting Party in the event the other Contracting Party does not take such appropriate corrective action within a reasonable time.

ARTICLE 6
AVIATION SECURITY

1. In accordance with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to one another 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, as well as any other convention or protocol relating to the security of civil aviation which all the Contracting Parties adhere to.

2. Each Contracting Party shall provide upon request from the other Contracting Parties all necessary assistance to one another to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their crew, airports and air navigation facilities, and to address 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 provisions established by the International Civil Aviation Organisation and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of

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airports in their territory act in conformity with such aviation security provisions.

4. Each Contracting Party shall observe the security provisions required by the other Contracting Parties for entry into, departure from, and while within their respective territories and to take adequate measures to protect aircraft and to inspect crew, and their carry-on items, as well as cargo and aircraft stores, prior to and during loading or unloading. Each Contracting Party shall also give positive consideration to any request from another Contracting Party for 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 crew, aircraft, airports or air navigation facilities occurs, the Contracting Parties shall assist one another by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

6. When a Contracting Party has reasonable grounds to believe that another Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of receipt by the other Contracting Party of such request shall constitute grounds to withhold, revoke, suspend, impose conditions on or limit the operating authorisation and technical permission of an airline or airlines of that Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of fifteen (15) days.

7. Each Contracting Party shall require the airline(s) of another Contracting Party providing service to that Contracting Party to submit a written operator security programme which has been approved by the aeronautical

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authority of the Contracting Party of that airline for acceptance.

ARTICLE 7
TARIFFS

1. The tariffs to be applied by the designated airline or airlines of a Contracting Party for air services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, tariffs of other airlines, and other commercial considerations in the market-place.

2. Tariffs charged by airlines shall not be required to be filed with, or approved, by either Contracting Party. However, in the event the national law of a Contracting Party requires prior approval of a tariff, the tariff application shall be dealt with accordingly. In such cases, the principle of reciprocity may be applied by the Contracting Parties concerned at their discretion.

3. The Contracting Parties agree to give particular attention to tariffs that may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, or artificially low because of direct or indirect governmental subsidy or support or other anti-competitive practices.

4. The Contracting Parties shall ensure that the designated airlines provide the general public with full and comprehensive information on their air fares and rates and the conditions attached in advertisements to the public concerning their fares.

ARTICLE 8
OPERATION OF LEASED AIRCRAFT

1. When a designated airline proposes to use an aircraft other than one owned by it on the international air freight

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services provided in this Agreement, this would only be done subject to the following conditions:

a) that such arrangements will not be equivalent to allowing a lessor airline access to traffic rights not otherwise available to that airline;

b) that the financial benefit to be obtained by the lessor airline will not be dependent on the profit or loss of the operation of the designated airline concerned, and

c) that the responsibility for the continued airworthiness and the adequacy of operating and maintenance standards of any leased aircraft operated by an airline designated by one Contracting Party will be established in conformity with the Convention.

2. A designated airline is not otherwise prohibited from providing air services using leased aircraft provided that any lease arrangement entered into satisfies the conditions listed in paragraph 1 of this Article.

ARTICLE 9
COMMERCIAL ACTIVITIES

1. In accordance with the laws and regulations of the other Contracting Parties, the designated airline of ~~one~~ a Contracting Party shall have the right:

a) in relation to entry, residence and employment, to bring in and maintain in the territory of the other Contracting Parties managerial and other specialist staff, office equipment and other related equipment and promotional materials required for the operation of international air freight services;

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b) to establish offices in the territory of the other Contracting Party for the purposes of provision, promotion and sale of air services;

c) to engage in the sale of air services in the territory of the other Contracting Party directly and, at its discretion, through its agents; to sell such air services , and any person shall be free to purchase such services in local currency of that territory or, subject to the national laws and regulations, in freely convertible currencies of other countries;

d) to convert and remit to the territory of its incorporation, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the airline makes the initial application for remittance. Such conversion and remittance shall be made in accordance with the foreign exchange regulations of the Contracting Party concerned;

e) to pay for local expenses, including purchases of fuel, in the territories of the other Contracting Parties in local currency. At their discretion, the airline(s) of each Contracting Party may pay for such expenses in the territory of the other Contracting Parties in freely convertible currencies according to local currency regulation.

2. In operating or holding out the authorised services on the agreed routes, the designated airline(s) may, subject to national laws and regulations, enter into cooperative marketing arrangements which may include but are not limited to code-sharing, block-space with:

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a) an airline or airlines of the same Contracting Party;

b) an airline or airlines of the other Contracting Parties; and

c) a surface transportation provider of any Contracting Parties

provided that all participants in such arrangements hold the appropriate authorisation and meet the requirements applied to such arrangements.

3. Subject to the national laws, rules and regulations of each Contracting Party, any designated airline(s) and indirect providers of cargo transportation of each Contracting Party shall be permitted without restriction to employ in connection with international air freight services any surface transportation for cargo to or from any points within or outside the territories of the Contracting Parties, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Subject to the national laws, rules and regulations of each Contracting Party, the designated airline(s) may elect to perform their own surface transportation or to provide its through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

ARTICLE 10
CHANGE OF GAUGE

1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the

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territory of another Contracting Party or at any point along the specified routes, provided that:

a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be; and

b) in the case of a change of aircraft in the territory of another Contracting Party and where more than one aircraft is allowed to operate beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the third and fourth freedom sector, provided that the total authorised capacity of all the outbound aircraft, when combined together, shall not be more than the total capacity of the aircraft arriving at the point of change of gauge..

2. For the purpose of change of gauge operations, a designated airline may use its own equipment and, subject to national laws, rules and regulations, leased equipment, and may operate under commercial arrangements with another airline.

3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations.

ARTICLE 11
USER CHARGES

1. No Contracting Party shall impose or permit to be imposed on the designated airlines of another Contracting Party user charges higher than those imposed on its own airlines operating similar international air freight services.

2. Each Contracting Party shall encourage consultations on user charges between its competent charging authorities

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and airlines using the services and facilities provided by those charging authorities, 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 authorities and such users to exchange appropriate information concerning user charges.

ARTICLE 12
CUSTOMS DUTIES

1. Each Contracting Party shall on the basis of reciprocity exempt a designated airline of any other Contracting Party to the fullest extent possible under its national laws, rules and regulations from customs duties, excise taxes, inspection fees and other national duties and charges on aircraft, fuel, ground equipment, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items, such as printed air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline, intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Contracting Party operating the agreed services.

2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1:

a) introduced into the territory of the Contracting Party by or on behalf of the designated airline of another Contracting Party;

b) retained on board aircraft of the designated airline of one Contracting Party upon arrival in or leaving the territory of another Contracting Party; or

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c) taken on board aircraft of the designated airline of one Contracting Party in the territory of another Contracting Party and intended for use in operating the agreed services

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Contracting Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of any Contracting Party, may be unloaded in the territory of another Contracting Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

4. The exemptions provided by this Article shall also be available where the designated airline(s) of one Contracting Party has contracted with another designated airline, which similarly enjoys such exemptions from another Contracting Party or Contracting Parties, for the loan or transfer in the territory of the other Contracting Party or Contracting Parties of the items specified in paragraph 1 of this Article.

ARTICLE 13
FAIR COMPETITION

Each Contracting Party agrees:

a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air freight services governed by this Agreement, and

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b) to take action to eliminate all forms of discrimination and/or anti-competitive practices by that Contracting Party and/or its designated airlines that it deems to adversely affect the competitive position of a designated airline of any other Contracting Party.

ARTICLE 14
SAFEGUARDS

1. The Contracting Parties agree that the following airline practices may be regarded as possible anti-competitive practices that may merit closer examination:

a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the international air freight services to which they relate;

b) the addition of excessive capacity or frequency of international air freight services;

c) the practices in question are sustained rather than temporary;

d) the practices in question have a serious negative economic effect on, or cause significant damage to another airline;

e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and

f) behaviour indicating an abuse of dominant position on the route.

2. If the aeronautical authorities of one Contracting Party consider that an operation or operations intended or conducted by the designated airline of another Contracting

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Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, or any discrimination by means of undue state aid and/or subsidy by that other Contracting Party, they may request consultations in accordance with Article 17 (Consultations and Amendment) with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultations shall begin within fifteen (15) days of the receipt of such request.

3. If the Contracting Parties fail to reach a resolution of the problem through consultations, any Contracting Party may invoke the dispute resolution mechanism under Article 18 (Settlement of Disputes) to resolve the dispute.

4. The grant of state aid and/or subsidy shall be transparent among the Contracting Parties, and shall not distort competition among the designated airlines of the Contracting Parties. The Contracting Parties concerned shall furnish other interested Contracting Parties, upon their requests, with complete information on such grant and any revision to or extension of such grant. Such information shall be treated with the utmost sensitivity and confidentiality.

ARTICLE 15
APPLICATION OF LAWS AND REGULATIONS

1. While entering, within, or leaving the territory of one Contracting Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the airlines designated by any other Contracting Party.

2. While entering, within, or leaving the territory of one Contracting Party, its laws, regulations and rules relating to the admission to or departure from its territory of crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations)

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shall be complied with by, or on behalf of, such crew or cargo of the airlines of any other Contracting Party.

3. Cargo in transit through the territory of any Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.

ARTICLE 16
STATISTICS

The aeronautical authority of each Contracting Party shall provide the aeronautical authorities of the other Contracting Parties, upon request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.

ARTICLE 17
CONSULTATIONS AND AMENDMENT

1. The aeronautical authorities of the Contracting Parties shall consult with one another from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement. Unless otherwise agreed, such consultations shall begin at the earliest possible date, but not later than sixty (60) days from the date the other Contracting Party or Parties receive, through diplomatic or other appropriate channels, a written request, including an explanation of the issues to be raised. When the date for consultations has been agreed, the requesting Contracting Party shall also notify all the other Contracting Parties of the consultations and the issues to be raised. Any Contracting Party may attend. Once the consultations have been concluded, all the Contracting Parties as well as the Depository shall be notified of the results.

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2. If one third of the Contracting Parties consider it desirable to amend any provision of this Agreement, they shall be entitled, by request addressed to the Secretary-General of ASEAN, given not earlier than twelve (12) months after the entry into force of this Agreement, to call a meeting of all the Contracting Parties in order to consider any amendments which they may propose to this Agreement. Such amendment, if agreed among all the Contracting Parties and if necessary after consultations in accordance with paragraph 1 of this Article, shall come into effect when more than half of the Contracting Parties have deposited their Instruments of Ratification or Acceptance of such amendment.

3. In the event of the conclusion of any general multilateral convention concerning international air freight services by which all the Contracting Parties become bound, this Agreement shall be so modified as to conform with the provisions of such convention.

ARTICLE 18
SETTLEMENT OF DISPUTES

The provisions of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, done at Vientiane, Lao PDR, on 29 November 2004 and any amendment thereto, shall apply to disputes arising under this Agreement.

ARTICLE 19
RELATIONSHIP TO OTHER AGREEMENTS

1. This Agreement or any actions taken thereto shall not affect the rights and obligations of the Contracting Parties under any existing agreements or international conventions to which they are also Contracting Parties, except as provided in paragraph 3 of this Article.

2. Nothing in this Agreement shall prejudice the rights or the exercise of these rights by any Contracting Party under

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the provisions of the United Nations Convention on the Law of the Sea of 1982, in particular with regard to freedom of the high seas, rights of innocent passage, archipelagic sea lanes passage or transit passage of ships and aircraft, and consistent with the Charter of the United Nations.

3. In the event of any inconsistency between a provision of this Agreement and a provision of any existing bilateral or multilateral air services agreement(s) (including any amendments thereto), by which two or more of the ASEAN Member States are bound or which is not covered by this Agreement, the provision which is less restrictive or more liberal or which is not covered by this Agreement, shall prevail between the said Contracting Parties. If the inconsistency concerns provisions relating to safety or aviation security, the provisions prescribing a higher or more stringent standard of safety or aviation security shall prevail to the extent of the inconsistency.

ARTICLE 20
FINAL PROVISIONS

1. This Agreement shall be deposited with the Depository who shall promptly furnish a certified true copy thereof to each Contracting Party.

2. This Agreement is subject to ratification or acceptance by the Contracting Parties. The Instruments of Ratification or Acceptance shall be deposited with Depository who shall promptly inform each Contracting Party of such deposit.

3. This Agreement shall enter into force on the date of the deposit of the third (3rd) Instrument of Ratification or Acceptance with the Secretary-General of ASEAN and shall become effective only among the Contracting Parties that have ratified, or accepted it.

4. Subject to paragraph 3 of this Article, the Implementing Protocols of this Agreement shall enter into force upon

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ratification or acceptance as set out in the "Final Provisions" of each of the respective Implementing Protocol(s). The provisions of this Agreement shall only apply in respect of the Implementing Protocol that has entered into force among the Contracting Parties that have ratified or accepted it.

5. The Depository shall maintain a centralised register of airline designations and operating authorisation in accordance with Article 3 (Designation and Authorisation of Airlines) of this Agreement.

6. When this Agreement has entered into force for all the Contracting Parties, the 2002 ASEAN Memorandum of Understanding on Air Freight Services shall cease to have effect.

7. The Depository shall register this Agreement with the International Civil Aviation Organisation as soon as it enters into force.

IN WITNESS WHEREOF, the undersigned, being duly authorised to sign by their respective Governments, have signed this ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services.

DONE at **Manila, Philippines**, this 20th day of ...May..... in the Year **Two Thousand** and Nine, in a single original copy in the English language.

For Brunei Darussalam:

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PEHIN DATO ABU BAKAR APONG
Minister of Communications

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For the Kingdom of Cambodia:

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MAO HAVANNALL
Secretary of State
State Secretariat of Civil Aviation

For the Republic of Indonesia:

.....

JUSMAN SYAFII DJAMAL
Minister for Transportation

For the Lao People's Democratic Republic:

.....

SOMMAD PHOLSENA
Minister of Public Works and Transport

For Malaysia:

.....

DATO' SRI ONG TEE KEAT
Minister of Transport

For the Union of Myanmar:

.....

MAJOR GENERAL THEIN SWE
Minister for Transport

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For the Republic of the Philippines:

.....
LEANDRO R. MENDOZA
Secretary of Transportation and Communications

For the Republic of Singapore:

.....
RAYMOND LIM
Minister for Transport

For the Kingdom of Thailand:

.....
SOPHON ZARAM
Minister of Transport

For the Socialist Republic of Viet Nam:

.....
HO NGHIA DZUNG
Minister of Transport

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BY GENERAL, THE ASEAN SECRETARIAT

PROTOCOL 1
ON UNLIMITED THIRD, FOURTH AND FIFTH FREEDOM TRAFFIC RIGHTS AMONG DESIGNATED POINTS IN ASEAN

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (ASEAN) (hereinafter referred to collectively as "Contracting Parties" or individually as "Contracting Party"),

RECALLING the ASEAN Multilateral Agreement on Full Liberalisation of Air Freight Services signed on 20 May 2009 in Manila, Philippines (hereinafter referred to as "the Agreement");

RECOGNISING also paragraph 3 of Article I of the Framework Agreement on Enhancing ASEAN Economic Cooperation signed on 28 January 1992 in Singapore, that, in the implementation of economic arrangements, two or more Member States may proceed first if other Member States are not ready to implement these arrangements; and

DESIRING to remove restrictions on air freight services with a view of achieving full liberalisation in ASEAN by 2008,

HAVE AGREED AS FOLLOWS:

CERTIFIED FOR DEPOSIT SECRETARY GENERAL, THE ASEAN SECRETARIAT asean

Article 1 – Definitions

For the purposes of this Protocol, the term "fifth (5^{th}) freedom traffic rights" means intermediate and beyond fifth (5^{th}) freedom traffic rights which are to be operated wholly within ASEAN.

Article 2 – Routing & Traffic Rights

1. The designated airline(s) of each Contracting Party shall be allowed to operate international air freight services among designated points with international airports with full third (3^{rd}), fourth (4^{th}) and fifth (5^{th}) freedom traffic rights.

2. Notwithstanding paragraph 1 of this Article, the right to take on board or put down, in the territory of any other Contracting Party cargo or mail carried for remuneration and destined for or coming from points in the territory of any non-Contracting Party or non-ASEAN Member States, shall be subject to the agreement between the aeronautical authorities of the Contracting Parties concerned.

Article 3 – Capacity and Frequency

There shall be no limitation on capacity, frequency and aircraft type with regard to air freight services operated under this Protocol as provided in Article 2.

Article 4 – Specification of Points

1. The designated points of the Contracting Parties as mentioned in Article 2 are listed below:

Brunei Darussalam	:	Bandar Seri Begawan
Cambodia	:	Phnom Penh

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Indonesia	:	Batam, Balikpapan, Biak, Makassar,Manado,Palembang, Pontianak
Lao PDR	:	Vientiane, Luang Phabang, Pakse
Malaysia	:	Kuala Lumpur
Myanmar	:	Yangon, Mandalay
Philippines	:	Clark, Subic, Cebu, Davao, Iloilo, Laoag
Singapore	:	Singapore
Thailand	:	Bangkok, Chiang Mai, Hat Yai, Khon Kaen, Phuket, U-Tapao, Ubon Ratchathani
Viet Nam	:	Ha Noi, Da Nang, Ho Chi Minh City, Chu Lai

2. The Contracting Parties may designate additional points on a voluntary basis. Such designation shall be transmitted in writing through diplomatic channels to the Depository and the Depository shall notify all the other Contracting Parties.

Article 5 - Operational Flexibility

Each designated airline may, on any or all flights and at its option:

a. operate flights in either or both directions;

b. combine different flight numbers within one aircraft operation;

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c. serve intermediate, and beyond points and points in the territories of the Contracting Parties on the routes in any combination and in any order;

d. omit stops at any point or points; and

e. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes,

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that the service serves from a point in the territory of the Contracting Party designating the airline.

Article 6 - Timetable Approval and Supplementary Flights

1. The designated airline(s) of each Contracting Party may be required to submit its envisaged flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the operation of the agreed services. Any modification thereof shall be submitted for consideration at least fifteen (15) days prior to the operation.

2. For supplementary flights which the designated airline(s) of one Contracting Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Contracting Party. Such requests shall usually be submitted at least four (4) working days prior to the operation of such flights.

Article 7 - Final Provisions

1. This Protocol shall be deposited with the Depository who shall promptly furnish a certified copy thereof to each Contracting Party.

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2. This Protocol is subject to ratification or acceptance by the Contracting Parties who have ratified the Agreement. The Instruments of Ratification or Acceptance shall be deposited with the Depository who shall promptly inform each Contracting Party of such deposit.

3. This Protocol shall enter into force on the date of the deposit of the third (3rd) Instrument of Ratification or Acceptance with the Secretary-General of ASEAN and shall become effective only among the Contracting Parties that have ratified or accepted it. For each Contracting Party ratifying or accepting the Protocol after the deposit of the third (3rd) Instrument of Ratification or Acceptance, the Protocol shall enter into force on the date of the deposit of such Contracting Party of its Instrument of Ratification or Acceptance.

4. Any amendment to the provisions of this Protocol shall be effected by consent of all the Contracting Parties, as provided for under Article 17 (Consultations and Amendment) of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed Protocol 1 on Unlimited Third, Fourth and Fifth Freedom Traffic Rights among Designated Points in ASEAN.

DONE at **Manila, Philippines,** this 30th day of May in the Year **Two Thousand and** Nine, in a single original copy in the English language.

For Brunei Darussalam:

PEHIN DATO ABU BAKAR APONG
Minister of Communications

CERTIFIED COPY REPORT SECRETARY GENERAL THE ASEAN SECRETARIAT asean

For the Kingdom of Cambodia:

.....

MAO HAVANNALL
Secretary of State
State Secretariat of Civil Aviation

For the Republic of Indonesia:

.....

JUSMAN SYAFII DJAMAL
Minister for Transportation

For the Lao People's Democratic Republic:

.....

SOMMAD PHOLSENA
Minister of Public Works and Transport

For Malaysia:

.....

DATO' SRI ONG TEE KEAT
Minister of Transport

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For the Union of Myanmar:

.....

MAJOR GENERAL THEIN SWE
Minister for Transport

For the Republic of the Philippines:

.....

LEANDRO R. MENDOZA
Secretary of Transportation and Communications

For the Republic of Singapore:

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RAYMOND LIM
Minister for Transport

For the Kingdom of Thailand:

.....

SOPHON ZARAM
Minister of Transport

For the Socialist Republic of Viet Nam:

.....

HO NGHIA DZUNG
Minister of Transport

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PROTOCOL 2
ON UNLIMITED THIRD, FOURTH AND FIFTH FREEDOM TRAFFIC RIGHTS AMONG ALL POINTS WITH INTERNATIONAL AIRPORTS IN ASEAN

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (ASEAN) (hereinafter referred to collectively as "Contracting Parties" and individually as "Contracting Party"),

RECALLING the ASEAN Multilateral Agreement on Full Liberalisation of Air Freight Services signed on 20 May 2009 in Manila, Philippines (hereinafter referred to as "the Agreement");

RECOGNISING also paragraph 3 of Article I of the Framework Agreement on Enhancing ASEAN Economic Cooperation signed on 28 January 1992 in Singapore, that, in the implementation of economic arrangements, two or more Member States may proceed first if other Member States are not ready to implement these arrangements; and

DESIRING to remove restrictions on air freight services with a view of achieving full liberalisation in ASEAN by 2008;

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

For the purposes of this Protocol, the term "fifth (5^{th}) freedom traffic rights" means intermediate and beyond fifth (5^{th})

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freedom traffic rights which are to be operated wholly within ASEAN.

Article 2 – Routing and Traffic Rights

1. The designated airline(s) of each Contracting Party shall be allowed to operate international air freight services among all points with international airports with full third (3rd), fourth (4th) and fifth (5th) freedom traffic rights by 31 December 2008.

2. Notwithstanding paragraph 1 of this Article, the right to take on board or put down, in the territory of any other Contracting Party cargo or mail carried for remuneration and destined for or coming from points in the territory of any non-Contracting Party or non-ASEAN Member States, shall be subject to the agreement between the aeronautical authorities of the Contracting Parties concerned.

Article 3 – Capacity and Frequency

There shall be no limitation on capacity, frequency and aircraft type with regard to air freight services operated under this Protocol.

Article 4 – Operational Flexibility

Each designated airline may, on any or all flights and at its option:

a. operate flights in either or both directions;

b. combine different flight numbers within one aircraft operation;

c. serve intermediate, and beyond points and points in the territories of the Contracting Parties on the routes in any combination and in any order;

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d. omit stops at any point or points; and

e. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes,

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that the service serves from a point in the territory of the Contracting Party designating the airline.

Article 5 – Timetable Approval and Supplementary Flights

1. The designated airline(s) of each Contracting Party may be required to submit its envisaged flight schedules for approval to the aeronautical authorities of the other Contracting Party at least thirty (30) days prior to the operation of the agreed services. Any modification thereof shall be submitted for consideration at least fifteen (15) days prior to the operation.

2. For supplementary flights which the designated airline(s) of one Contracting Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Contracting Party. Such requests shall usually be submitted at least four (4) working days prior to the operation of such flights.

Article 6 – Final Provisions

1. This Protocol shall be deposited with the Depository who shall promptly furnish a certified copy thereof to each Contracting Party.

2. This Protocol is subject to ratification or acceptance by the Contracting Parties who have ratified the Agreement. The Instruments of Ratification or Acceptance shall be

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deposited with the Depository who shall promptly inform each Contracting Party of such deposit.

3. This Protocol shall enter into force on the date of the deposit of the third (3rd) Instrument of Ratification or Acceptance with the Secretary-General of ASEAN and shall become effective only among the Contracting Parties that have ratified or accepted it. For each Contracting Party ratifying or accepting the Protocol after the deposit of the third (3rd) Instrument of Ratification or Acceptance, the Protocol shall enter into force on the date of deposit of such Contracting Party of its Instrument of Ratification or Acceptance.

4. Any amendment to the provisions of this Protocol shall be effected by consent of all the Contracting Parties, as provided for under Article 17 (Consultations and Amendment) of the Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed Protocol 2 on Unlimited Third, Fourth and Fifth Freedom Traffic Rights among All Points with International Airports in ASEAN.

DONE at **Manila, Philippines,** this 20th day of ...May..... in the Year **Two Thousand and** .Nine., in a single original copy in the English language.

For Brunei Darussalam:

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PEHIN DATO ABU BAKAR APONG
Minister of Communications

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For the Kingdom of Cambodia:

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MAO HAVANNALL
Secretary of State
State Secretariat of Civil Aviation

For the Republic of Indonesia:

.....

JUSMAN SYAFII DJAMAL
Minister for Transportation

For the Lao People's Democratic Republic:

.....

SOMMAD PHOLSENA
Minister of Public Works and Transport

For Malaysia:

.....

DATO' SRI ONG TEE KEAT
Minister of Transport

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For the Union of Myanmar:

.....

MAJOR GENERAL THEIN SWE
Minister for Transport

For the Republic of the Philippines:

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LEANDRO R. MENDOZA
Secretary of Transportation and Communications

For the Republic of Singapore:

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RAYMOND LIM
Minister for Transport

For the Kingdom of Thailand:

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Minister of Transport

For the Socialist Republic of Viet Nam:

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HO NGHIA DZUNG
Minister of Transport

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