ANNEX 5: CROSS-BORDER MOVEMENT OF PEOPLE

To the Agreement between and among the Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for Facilitation of Cross-Border Transport of Goods and People (hereinafter referred to as "the Annex")

The Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam (hereinafter referred to as "the Contracting Parties"),

Referring to the Agreement between and among the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People, originally signed at Vientiane on 26 November 1999, amended at Yangon on 29 November 2001, acceded to by the Kingdom of Cambodia at Yangon on 29 November 2001, acceded to by the People's Republic of China at Phnom Penh on 3 November 2002, and acceded to by the Union of Myanmar at Dali City on 19 September 2003, and amended at Phnom Penh on 30 April 2004 (hereinafter referred to as "the Agreement"),

Referring to Articles 3(b) and (n) of the Agreement to the effect that Annexes and Protocols contain technical details or time- and/or site-specific variable elements and that they form an integral part of the Agreement and are equally binding,

Referring to Article 36 of the Agreement, as amended, per which the Agreement may be signed and ratified or accepted and enter into force separately from the Annexes and Protocols,

Referring to the Ninth GMS Ministerial Conference held in Manila in January 2000, the Seventh Meeting of the Subregional Transport Forum held in Ho Chi Minh City in August 2002, and the 11th GMS Ministerial Conference held in Phnom Penh in September 2002, where the Governments agreed to a work program to finalize the Agreement and its Annexes and Protocols by 2005, and

Referring to Articles 5 and 6 of the Agreement, calling for this Annex to provide technical details,

HAVE AGREED AS FOLLOWS:

Part I: General Provisions

Article 1: Definitions

For the purpose of this Annex, the following meanings shall apply to the underlined terms:

(a) Accompanied Luggage: luggage that travels with the passenger on the same means of transportation.

(b) Carrier: a person who undertakes to carry for reward or gratuitously in the course of his/her business, a passenger and, where appropriate, the latter's luggage.

(c) Delay: delay in the performance of the carriage when it did not arrive at the destination within the agreed period or in the absence of such an agreement, within the normal period of time required for a due diligent carrier in the same circumstances.

(d) Force Majeure: circumstances resulting in injury, loss, damage, or delay that the carrier could not foresee and avoid, and the consequences of which the carrier was unable to prevent or control.

(e) Hand Luggage: luggage kept by the passenger with him/her during the carriage.

(f) Passenger: any person who, in the performance of a contract of carriage made by him/her or on his/her behalf, is carried by a carrier either for reward or gratuitously in the course of the latter's business.

(g) Registered Luggage: luggage taken over from the passenger by the carrier for the purpose of the carriage.

(h) Remarks: statements made by the carrier or the passenger on the condition of the luggage upon its taking over or delivery.

(i) Special Drawing Right (SDR): a unit of account defined by the International Monetary Fund (IMF) - conversion of sums into national currencies shall be calculated in accordance with the method of valuation applied by the IMF.

(j) Transport Operator: a natural or legal, private or public person, who carries goods and/or People by road for reward.

(k) Unaccompanied Luggage: luggage conveyed like cargo, normally not on the same means of transportation as the passenger.

Part II: Immigration (Entry/Exit), Health, and Customs Control

Article 2: Valid Travel Documents and Visas

(a) Passport or International Travel Document for People Crossing the Border

People crossing the border shall carry a valid passport or international travel document in lieu of passport. Each Contracting Party shall provide the other Contracting Parties with specimens of passports or international travel documents in lieu of passports through diplomatic channels. People crossing the border shall meet the visa requirements of the Host Country, unless exempted in accordance with bilateral or regional agreements or Host Country laws and regulations.

(b) Visa Issuance Conditions and Procedures

(i) General Conditions for People Crossing the Border

- Issuance formalities, conditions, procedures, types, and characteristics of visas shall be subject to laws and regulations of the Host Country, except as provided in this Annex.

- The time for issuance or refusal of a visa shall be no more than 10 working days.

(ii) Specific Conditions for Driver/Crew of Commercially Operated Road Vehicles (hereinafter referred to as crew/driver)

- Period of Visa Validity

The driver/crew shall be issued by the Host Country a multiple entry/exit visa for a minimum validity period of one year. Shorter durations of the validity period and lesser entry/exit frequency may be allowed upon request by the applicant.

- Required Documents To Support the Application

The application for a visa by a driver/crew member shall be supported by a certificate of employment issued by an authorized transport operator of the Home Country licensed in accordance with the requirements of Annex 9 to the Agreement. The applicant driver shall also submit a copy of his/her driving license issued in accordance with Annex 16 to the Agreement.

(c) Language

In addition to any national language(s), all particulars in passports or international travel documents in lieu of passports and visas shall also be expressed in English language.

Article 3: Health Inspection of People

(a) General: The Host Country shall apply its national laws and regulations in compliance with the International Health Regulations of the World Health Organization (WHO).

(b) Principle: no examination.

As a rule, people who:

(i) carry the prescribed WHO health documents;
(ii) do not come from and have not passed through a known infected or risk area; and
(iii) do not show any external symptoms of a contagious disease endangering public health

will not be subjected to routine medical checks, inspection, or examination.

(c) Exception: examination is permissible in particular cases.

People who may be subjected to medical examination are those who:

(i) do not carry the prescribed WHO health documents;
(ii) come from or have transited through a known infected or risk area; or
(iii) show external symptoms of a contagious disease endangering public health.

(d) Reaction to Spotting Infected Individuals

Whenever people are, upon medical examination, found to be infected with a contagious disease endangering public health, the relevant competent authority:

(i) may deny access to the territory or repel foreign individuals if their health condition enables them to travel and advise them to return to their Home Country;
(ii) if their health condition does not enable them to travel, shall offer appropriate medical care and treatment in isolation/quarantine to the individuals; and
(iii) shall notify promptly the WHO via the appropriate channels in accordance with the applicable rules.

(e) Health Documents: People may be required to carry personal health documents prescribed by the WHO (e.g., yellow fever vaccination certificate).

Article 4: Customs Control of Personal Effects: Duty-Free Allowance

(a) Temporary Admission

(i) Temporary importation of personal effects by non-resident private persons shall be exempt from customs duties and taxes in the Host Country, subject to re-exportation within the permissible period of stay and without having undergone any change apart from depreciation and/or consumption. Also, re-importation in the same state (without replacement of any part or accessory) by returning residents in their Home Country of personal effects they took along at the time of their departure from their Home Country shall be free of customs duties and taxes.

(ii) For the purpose of this provision, personal effects shall mean all articles (new or used) that a traveler may reasonably require for his/her personal use during the journey, taking into account all circumstances of the journey, but excluding any goods imported or exported for commercial purposes. They include but are not limited to:

- clothing;
- toilet articles;
- personal jewelry;
- still and motion picture cameras together with a reasonable supply of films, tapes, and accessories therefor;
- portable slide or film projectors and accessories therefore together with a reasonable quantity of slides or films;
- binoculars;

- portable musical instruments;
- portable sound reproduction devices including tape recorders and compact disc players;
- portable radio receivers;
- cellular or mobile telephones;
- portable television sets;
- portable typewriters;
- portable personal computers and accessories;
- portable calculators;
- baby carriages and strollers;
- wheelchairs for invalids; and
- sporting equipment.

(b) Duty Free Importation

The traveler shall also be allowed to import, free of import duties and taxes, the following items in reasonable quantities for personal use, excluding commercial purposes, subject to Host Country regulations but not less than:

(i) consumables: 200 cigarettes or 50 cigars or 250 grams of tobacco or an assortment of these products of a total weight not exceeding 250 grams, and 1 liter of spirits;

(ii) other goods of a noncommercial nature with an aggregate value of SDR 75.00; and

(iii) currency for living expenses: SDR 100.00 per day of stay.

The quantities and amounts may be more restricted for travelers (i) under a certain age or (ii) crossing the border frequently (more than once within 24 hours).

Article 5: Sanitary Inspection of Personal Effects

Personal effects of people crossing the border shall be subject to sanitary inspection in accordance with the provisions of Article 9 of the Agreement.

Part III: Facilitation Measures

Article 6: Facilitation Measures

The facilitation measures shall be those stipulated in Annex 4 to the Agreement.

Part IV: Passenger Transport Conditions

Article 7: Transport Pricing

(a) For non-scheduled services, the transport price will be freely determined by market forces, but subject to antitrust restrictions, so as to avoid excessively high or low pricing. Contracting Parties and transport operators shall refrain from any measures, agreements, or practices tending to distort free and fair competition, such as cartels, abuse of dominant position, dumping, and state subsidization. They shall be denied any effect and be null and void. Contracting Parties shall ensure that their respective transport operators conform to this precept.

(b) For scheduled services, the Contracting Parties involved will agree on the transport price.

Article 8: Accompanied Luggage Allowance and Excess Luggage Charges

(a) For non-scheduled transport service the luggage allowance is left to the mutual agreement between the parties to the contract of carriage.

(b) For scheduled transport services each passenger is to be allowed to bring along free of charge luggage weighing up to 20 kilograms and of reasonable size. Transport operators may charge for excess luggage. The surcharge may vary depending on the route, but shall not exceed five percent of a full-fare passenger ticket price per excess kilogram of weight.

Article 9: Unaccompanied Luggage

The tariff for unaccompanied luggage will be governed by the regime stipulated in Annex 10 to the Agreement.

Part V: Passenger Road Carrier Liability Regime

Article 10: Scope of Application

(a) The carrier liability regime set out below shall apply to every contract for the carriage of passengers and their luggage for reward or gratuitously in the course of the carrier's business by road in a motor vehicle, when the passenger's places of departure and destination are situated in the territories of different Contracting Parties.

(b) The carrier liability for carriage of unaccompanied luggage will be governed by the regime stipulated in Annex 10 to the Agreement.

Article 11: The Contract of Carriage

(a) Transport Documents

Passenger Ticket

(i) The contract of carriage shall be recorded via the issuance of a collective or individual passenger ticket. The absence, irregularity, or loss of the ticket shall not affect the existence or the validity of the contract of carriage, which shall remain subject to the provisions of this Annex.

(ii) The ticket shall mention in the national language and in English the following particulars:

- the name and address of the carrier;
- the point of departure and destination;
- the date of the journey or the period of the validity of the ticket;
- the transport price; and
- a reference to the rule of law containing the liability regime of this Annex.

(iii) The ticket may be issued to a named person or to bearer.

Luggage Registration Voucher

(iv) For registered luggage, the carrier shall issue a luggage registration voucher, which may be combined with the passenger ticket.

(v) The luggage registration voucher shall mention in the national language and in English the following particulars:

- the name and address of the carrier;
- the point of departure and destination;
- the date of issuance;
- the transport price;
- a reference to the rule of law containing the liability regime of this Annex; and
- the number and weight of the luggage.

(vi) In case of absence of the luggage voucher or omission to indicate the weight or number of the registered luggage, the luggage weight and number shall be presumed to be the maximum allowance.

(b) Remarks

(i) Upon registration of the luggage, the carrier shall check its apparent condition, and when necessary make appropriate remarks on the luggage registration voucher.

(ii) In the absence of remarks on its condition by the carrier, the luggage is presumed to be in good condition.

Article 12: Principles of Carrier Liability

(a) Mandatory Law

Any clause in the carriage contract directly or indirectly derogating from the provisions of the carrier liability regime of this Annex, unless it is in favor of the passenger, shall be null and void. The nullity of such a stipulation shall however not affect the validity of the other provisions of the contract.

(b) In Contract and in Tort

The present liability regime will govern any claim arising out of the performance of the carriage contract under this Annex, however founded, whether in contract or extra-contractually.

(c) Vicarious Liability for Servants, Agents, and Subcontractors

In connection with his/her tasks, the carrier shall be responsible for acts and/or omissions of his/her servants, agents, and subcontractors, who will be entitled to avail themselves of the same defenses as the carrier under this Annex.

Article 13: Subject of Carrier Liability

(a) Personal Injury

The carrier shall be liable for loss or damage resulting from the death or wounding or from other bodily or mental injury caused to a passenger as a result of an accident related to the carriage and occurring while the passenger is on board or entering or exiting the vehicle.

(b) Delay

The carrier shall be liable for damages resulting from delay in the arrival of the passenger and/or his/her luggage.

(c) Loss of or Damage to Registered Luggage

(i) The carrier shall be liable for the total, or partial loss of, or damage to the luggage that occurred in the period between the time that the carrier takes the goods in charge and the time of delivery.

(ii) Constructive Loss: If the registered luggage is not delivered within 30 days from the moment of the actual, scheduled, or normal arrival time, whichever is later, the luggage will be deemed lost. The passenger is then entitled to claim compensation for loss. Upon recovery of the luggage later on, the carrier shall notify immediately the passenger, who shall be entitled to opt for delivery of the luggage against refund of the compensation already received, but without prejudice to any claim for compensation for partial loss, damage, or delay. If the passenger does not require the return of the luggage, the carrier shall be entitled to deal with the luggage at his/her discretion, subject to the law of the place where the luggage is situated.

(d) Loss of or Damage to Hand Luggage and Personal Effects

The carrier shall be liable for the total, or partial loss of, or damage to the personal effects carried or worn by the passenger as a result of an accident related to the carriage and occurring while the passenger is on board or entering or exiting the vehicle.

Article 14: Measure of Compensation and Limitation of Carrier Liability

(a) In General

(i) The limits of liability shall be exclusive of legal expenses and interests. Higher limits may be agreed between the parties to the contract of carriage.

(ii) In addition to the compensation, the carrier shall be held to refund all or part of the transport price commensurate to the degree of his/her malperformance. He/she will owe no further damages.

(iii) The amount of compensation for death, wounding, or other bodily or mental injury of the passenger or total, or partial loss of, or damage to the luggage, or damage resulting from delay, shall be established according to the national law of the court where the liability action is brought.

(iv) Also, the claimant's right to sue shall be determined according to the national law of the court where the action for compensation is brought.

(v) The claimant is entitled to claim interest on the compensation due at the rate of 5 percent per annum from the date the claim was sent in writing or legal proceedings were instituted in court or arbitration was initiated.

(b) Regarding Personal Injury

(i) The total amount of compensation due by the carrier for the death or wounding or bodily or mental injury caused to a passenger in respect of the same occurrence shall not exceed SDR 9,000 per victim.

(ii) If there is more than one claimant per victim, and if the total of their claims exceeds the limits established, the claims shall be reduced proportionally.

(c) Regarding Loss of and Damage to Luggage and Personal Effects

(i) Registered Luggage

The amount of compensation due from the carrier for the loss of or damage to registered luggage shall not exceed SDR 8.33 per kilogram gross weight of luggage short delivered or of each item damaged, or SDR 166.67 per unit, whichever is higher.

(ii) Hand Luggage and Personal Effects

The amount of compensation due from the carrier for the loss of or damage to hand luggage or personal effects worn or carried by the passenger shall be limited to SDR 166.67.

(iii) Overall Limit

The total amount of compensation due from the carrier liability for one passenger's belongings shall not exceed SDR 333.34.

(d) Regarding Delay

The amount of compensation due from the carrier for damage, other than physical damage to luggage or personal effects or bodily injury of the passenger, resulting from delay, shall be limited to an amount not exceeding the transport price.

Article 15: Exoneration of Carrier Liability

(a) The carrier shall be relieved of liability to the extent that the accident, loss, delay, or damage was caused by:

(i) force majeure;

(ii) inherent defect of the luggage or personal effects;

(iii) contributory negligence of the passenger himself/herself; or

(iv) the passenger's pre-existing health condition.

(b) The defective condition of the vehicle used for the performance of the carriage, or the physical or mental failure of the driver, shall not relieve the carrier of his/her liability.

Article 16: Lifting of the Exoneration or Limitation of Carrier Liability

The carrier is not entitled to the benefit of the limitation or exoneration of liability if it is proved that the death, injury, loss, damage, or delay in delivery and/or arrival resulted from a personal act or omission of the carrier or his/her servants, agents, and subcontractors, done with the intent to cause such death, injury, loss, damage, or delay or recklessly and with knowledge that such loss, damage, or delay would probably result.

Article 17: Claims and Actions

(a) Remarks on Delivery

(i) Upon delivery of the registered luggage, the passenger shall check the number, contents, and condition of the luggage, and if shortage or damage is found, make immediately appropriate remarks in writing to the carrier.

(ii) In case of receipt of the registered luggage without remark, the luggage shall be presumed to have been delivered complete and intact.

(b) Time Bar

Claims for compensation arising out of a carriage under this Annex shall be time barred unless an action was filed with the court or arbitration was initiated within the following periods from the date of the accident or the actual, scheduled, or normal arrival time at destination, whichever is later:

(i) three years in case of death, or wounding, or any other bodily, or mental injury to a passenger; and

(ii) 6 months in case of loss of or damage to and delay of the luggage and personal effects, and delay in the arrival of the passenger.

(c) Jurisdiction

(i) An action for compensation based on this Annex may be brought in the courts of the Contracting Party:

- where the carriage originated from or was destined to;
- where the loss or damage occurred, if localized;
- where the principal place of business of the carrier is located; or
- where the habitual residence of the claimant is located.

(ii) The claim for compensation may also be settled by means of arbitration based on an agreement entered into between parties concerned after the claim has arisen.

Article 18: Compulsory Passenger Carrier Liability Insurance

With respect to his/her liability for death or injury of passengers, the carrier shall also comply with his/her obligation under Article 6 (c) of Annex 9 to the Agreement, if he/she contracts for the account of the passenger an insurance against personal injury, for actual damage up to SDR 9,000 without subrogation and/or with renunciation of recourse.

Part VI: Final Provisions

Article 19: Amendment

Any Contracting Party may propose amendments to the Annex via the Joint Committee. Such amendments shall be subject to the unanimous consent of the Contracting Parties.

Article 20: Ratification or Acceptance

(a) The Annex is subject to ratification or acceptance of the Governments of the Contracting Parties. The same applies to an amendment to the Annex, if any.

(b) Parts I (General Provisions) II (Immigration (Entry/Exit), Health and Customs Control), III (Facilitation Measures) and IV (Passenger Transport Conditions) of this Annex may be ratified or accepted separately from and before Part V (Passenger Road Carrier Liability Regime).

Article 21: Entry into Force

(a) The Annex will enter into force on the day that at least two Contracting Parties have ratified or accepted it, and will become effective only among the Contracting Parties that have ratified or accepted it. The same applies to an amendment to the Annex, if any.

(b) In case of separate ratification/acceptance, Parts I (General Provisions) II (Immigration (Entry/Exit), Health and Customs Control), III (Facilitation Measures), and IV (Passenger Transport Conditions) of this Annex may also enter into force separately from and before Part V (Passenger Road Carrier Liability Regime).

Article 22: Conforming National Law

Where necessary, the Contracting Parties undertake to conform their relevant national legislation with the contents of the Annex.

Article 23: Reservations

No reservation to the Annex shall be permitted.

Article 24: Suspension of the Annex

Each Contracting Party may temporarily suspend wholly or partly the application of the Annex with immediate effect in the case of emergencies affecting its national

safety. The Contracting Party will inform the other Contracting Parties as soon as possible of such suspension, which will end as soon as the situation returns to normal.

Article 25: Relationship with the Agreement

As a measure to implement the principles laid down in the Agreement, the Annex cannot depart from or be contrary to these principles. In case of incompatibility between the Annex and the Agreement, the latter shall prevail. In case of incompatibility between the Annex and another annex or protocol, such incompatibility shall be interpreted in light of the Agreement.

Article 26: Dispute Settlement

Any dispute between or among two or more Contracting Parties on the interpretation or application of the Annex shall be settled directly or by amicable negotiation in the Joint Committee.

Article 27: Denunciation

Once entered into force, the Annex cannot be denounced separately from the Agreement.

Done at Kunming on 5 July 2005 in six originals in the English language.

Signed:

For the Royal Government of Cambodia

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His Excellency Sun Chanthol
Minister of Public Works and Transport

For the Government of the People's Republic of China

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His Excellency Zhang Chunxian
Minister of Communications

For the Government of the Lao People's Democratic Republic

.....

His Excellency Somphong Mongkhonvilay
Minister to Prime Minister's Office

For the Government of the Union of Myanmar

.....

His Excellency Soe Tha
Minister of National Planning and Economic Development

For the Government of the Kingdom of Thailand

.....

His Excellency Suriya Jungrungreangkit
Minister of Transport

For the Government of the Socialist Republic of Viet Nam

.....

His Excellency Pham The Minh
Vice Minister of Transport