AGREEMENT ON TRADE IN SERVICES UNDER THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE REPUBLIC OF INDIA

PREAMBLE

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

RECALLING the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India ("the Framework Agreement") signed by the Heads of Government/State of ASEAN Member States and India in Bali, Indonesia on the 8th day of October 2003 and the Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, signed in Bangkok, Thailand on the 13th day of August 2009;

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RECALLING that Article 4 of the Framework Agreement calls on ASEAN and India to progressively liberalise and eliminate substantially all discrimination and/or prohibition of new or more discriminatory measures with respect to trade in services between the Parties, and to expand the depth and scope of such trade with substantial coverage beyond those undertaken by the Parties under the General Agreement on Trade in Services of the World Trade Organization (WTO);

STRIVING to enhance cooperation in services between the Parties in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties, for implementation in accordance with the timeframes to be mutually agreed by the Parties to the Framework Agreement;

RECALLING the instruction from the ASEAN Economic Ministers (AEM) – India Consultations held on the 28th day of August 2008 in Singapore for officials to commence, as soon as possible, negotiations on trade in services and investment as a single undertaking, and to work towards the conclusion of substantive discussions on these two agreements by 2009 to bring about a complete ASEAN-India Comprehensive Economic Cooperation Agreement;

REAFFIRMING that Article 2 of the Framework Agreement has provisions for special and differential treatment to Cambodia, Lao PDR, Myanmar, and Viet Nam; and for flexibility to the Parties to address their sensitive areas with such flexibilities to be negotiated and mutually agreed based on the principle of reciprocity and mutual benefits;

RECOGNISING the right of the Parties to regulate, and to introduce new regulations, on the supply of services in their respective territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulation within the

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Parties, the particular need of the Parties to exercise this right;

HAVE AGREED AS FOLLOWS:

PART I: SCOPE AND DEFINITIONS

ARTICLE 1
Scope

1. This Agreement applies to measures by the Parties affecting trade in services.

2. This Agreement shall not apply to:

   (a) services supplied in the exercise of governmental authority within the territory of each Party;

   (b) laws, regulations, or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale; and

   (c) cabotage in maritime transport services.

ARTICLE 2
Definitions

For the purposes of this Agreement:

(a) **a service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;

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(b) **commercial presence** means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

(c) **direct taxes** comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(d) **GATS** means the General Agreement on Trade in Services;

(e) **juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;

(f) **juridical person of another Party** means a juridical person which is either:

(i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or

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(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(AA) natural persons of that Party; or

(BB) juridical persons of that other Party identified under subparagraph (i);

(g) a **juridical person** is:

(i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

(ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(h) **licensing procedures** means administrative or procedural rules that a natural or a juridical person, seeking authorisation to supply a service, including the amendment or renewal of a license, must adhere to in order to demonstrate compliance with licensing requirements;

(i) **licensing requirements** means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend, or renew authorisation to supply a service;

(j) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

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(k) **measures by Parties** means measures taken by:

(i) central, regional, or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

(l) **measures by Parties affecting trade in services** include measures in respect of:

(i) the purchase, payment, or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

(m) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

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(n) **natural person of another Party** means a natural person who resides in the territory of that other Party or elsewhere, and who under the law of that other Party:

(i) is a national of that other Party; or

(ii) has the right of permanent residence[1] in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified after the entry into force of this Agreement provided that no Party is obliged to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

(o) **Parties** means the ASEAN Member States and India, collectively;

(p) **Party** means an ASEAN Member State or India;

(q) **person** means either a natural person or a juridical person;

[1] In the case of Cambodia, Indonesia, Lao PDR, Myanmar, Thailand, Viet Nam, and India, natural person of another Party shall be limited to a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party is a national of that other Party. Therefore, in line with the principle of reciprocity, this Agreement shall not apply to the permanent residents of Cambodia, Indonesia, Lao PDR, Myanmar, Thailand, Viet Nam, and India. Once any of these Parties enacts its domestic law on the treatment of permanent residents of another Party or non-party, there shall be negotiations on the issue of whether to include permanent residents in the coverage of natural person under this Agreement in respect of that Party.

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(r) **qualification procedures** means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service;

(s) **qualification requirements** means substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service;

(t) **sector** of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(u) **services** includes any service in any sector except services supplied in the exercise of governmental authority;

(v) **service consumer** means any person that receives or uses a service;

(w) **service of another Party** means a service which is supplied,

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

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(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

(x) **service supplier** means any person that supplies a service;[2]

(y) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;

(z) **technical standards** means measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards;

(aa) **trade in services** is defined as the supply of a service:

(i) from the territory of a Party into the territory of any other Party ("cross-border");

(ii) in the territory of a Party to the service consumer of any other Party ("consumption abroad");

(iii) by a service supplier of a Party, through commercial presence in the territory of any other Party ("commercial presence");

(iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of any other Party ("presence of natural persons").

[2] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

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PART II: OBLIGATIONS AND DISCIPLINES

ARTICLE 3
Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 of this Article is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by any other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1 of this Article. Each Party shall also establish one or more enquiry points to provide specific information to any other Party, upon request, on all such matters.

ARTICLE 4
Disclosure of Confidential Information

Article III *bis* of the GATS is, *mutatis mutandis*, incorporated into and shall form an integral part of this Agreement.

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ARTICLE 5
Domestic Regulation

1. In sectors where specific commitments are undertaken under Part III of this Agreement, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.

2. (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of paragraph 2(a) of this Article shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system provided, however, that in the event separate tribunals or procedures cannot be constituted, the relevant Party shall ensure that adequate remedies are available for the affected services supplier referred to in paragraph 2(a) of this Article through the ordinary judicial or quasi-judicial procedure of that Party[3].

3. Where authorisation is required for the supply of a service on which a specific commitment under this

[3] For greater certainty, the application of this paragraph shall be governed by the respective laws and regulations of the Parties.

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Agreement has been made, the competent authorities of each Party shall:

(a) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;

(b) at the request of the applicant, without undue delay, provide information concerning the status of the application, including incomplete application. In the case of an incomplete application, identify all the additional information that is required to complete the application and provide an opportunity to the applicant to remedy deficiencies within a reasonable timeframe;

(c) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing, without undue delay, the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. With the objective of ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to paragraph 4 of Article VI of the GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

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(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Party has undertaken specific commitments under Part III of this Agreement, pending the incorporation of the disciplines referred to in paragraph 4 of this Article, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:

(i) does not comply with the criteria outlined in paragraphs 4(a), (b) or (c) of this Article; and

(ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

(b) In determining whether a Party is in conformity with the obligation under paragraph 5(a) of this Article, account shall be taken of international standards of relevant international organisations[4] applied by that Party.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party in accordance with provisions in paragraph 5 of this Article.

[4] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all Parties to this Agreement.

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ARTICLE 6
Recognition

1. For the purposes of fulfilment of their respective standards or criteria for the authorisation, licensing or certification of service suppliers, each Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or the relevant competent bodies or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 of this Article, whether existing or future, shall afford adequate opportunity for other interested Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

3. Upon request being made in writing by a Party to the other Party, the Parties shall encourage their respective professional bodies or professional regulatory authorities, in any regulated services sector of mutual interest to negotiate and conclude within 12 months or a reasonable timeframe to be mutually agreed between the professional bodies of both Parties, any arrangement for mutual recognition of education, or experience obtained, requirements met, or licenses or certifications granted in that service sector, with a view to the achievement of early outcomes. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreements or arrangements shall not be regarded as a breach of a Party's obligations under this paragraph and shall not be subject to the Agreement on Dispute Settlement Mechanism under the Framework

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Agreement (ASEAN-India DSM Agreement). Progress in this regard will be reviewed by the Parties in the course of the review of this Agreement pursuant to Article 27 (Review).

4. Where harmonisation, agreement or arrangement as provided in paragraphs 1, 2 and 3 of this Article does not exist, each Party shall leave any consideration on mutual recognition or licensing to relevant professional bodies or professional regulatory authorities in its territory in accordance with domestic laws and regulations of the host country.

5. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

6. The Parties agree that they shall not be responsible in any way for the settlement of disputes arising out of or under the agreements or arrangements for mutual recognition concluded by their respective professional bodies or professional regulatory authorities under the provisions of this Article and that the provisions of the ASEAN-India DSM Agreement shall not apply to disputes arising out of, or under, the provisions of such agreements or arrangements.

ARTICLE 7
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a

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service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If any Party has reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraphs 1 or 2 of this Article, that Party may request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect,

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

ARTICLE 8
Business Practices

1. The Parties recognise that certain business practices of services suppliers, other than those falling under Article 7 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also

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provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 9
Safeguards

1. The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations. Until such a time, no Party shall take safeguard actions against services and service suppliers of the other Party or Parties, except in accordance with the procedure as detailed in paragraph 2 of this Article.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1 of this Article, the affected Party may request for consultations with the other Party or Parties for the purposes of discussing any safeguard measures with respect to the affected service sector. Any measure taken pursuant to this paragraph, including the duration for which the measure shall apply, shall be mutually agreed by the Parties concerned, shall be applicable based on the principle of non-discrimination, and shall be limited to the specific service sector. The Parties concerned shall take into account the circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

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ARTICLE 10
Payments and Transfers

1. Except under the circumstances envisaged in Article 11 (Restrictions to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of any Party who is a member of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 11 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

ARTICLE 11
Restrictions to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictions on trade in services in accordance with paragraphs 1, 2, and 3 of Article XII of the GATS.

ARTICLE 12
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be

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construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order;[5]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article 18 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective[6] imposition

[5] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

[6] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or

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or collection of direct taxes in respect of services or service suppliers of other Parties;

(e) resulting in difference in treatment provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

ARTICLE 13
Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

(i) action relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as

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(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in subparagraph (d) of this Article and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

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is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) action taken so as to protect critical public infrastructures including communication, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructure;

(iv) action taken in time of war or other emergency in domestic or international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. Each Party shall inform the other Parties to the fullest extent possible of measures taken under paragraphs 1(b) and 1(c) of this Article and of their termination.

3. Nothing in this Agreement shall be construed to require a Party to accord the benefits of this Agreement to a service supplier of another Party where a Party adopts or maintains measures in any legislation or regulation which it considers necessary for the protection of its essential security interest with respect to a non-Party or a service supplier of a non-Party that would be violated or circumvented if the benefits of this Agreement were accorded to such service supplier.

ARTICLE 14
Subsidies

1. Except where provided in this Article, this Agreement shall not apply to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt

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of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers. If such subsidies or grants significantly affect trade in services committed under this Agreement, any Party may request for consultations with a view to an amicable resolution of this matter.

2. Pursuant to this Agreement, the Parties shall:

(a) on request, provide information on subsidies related to trade in services committed under this Agreement to any requesting Party; and

(b) review the treatment of subsidies when relevant disciplines are developed by the WTO.

3. The provisions of the ASEAN-India DSM Agreement shall not apply to any request made or consultation held under the provisions of this Article or to any dispute that may arise between the Parties under the provisions of this Article.

ARTICLE 15
Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements. The Parties shall discuss and mutually agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.

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ARTICLE 16
Increasing Participation of Cambodia, Lao PDR, Myanmar and Viet Nam

1. The increasing participation of Cambodia, Lao PDR, Myanmar, and Viet Nam in this Agreement shall be facilitated through negotiated specific commitments, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia,* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks on a commercial basis; and

(c) the liberalisation of market access in sectors and modes of supply of export interest to them.

2. Appropriate flexibility shall be accorded to Cambodia, Lao PDR, Myanmar, and Viet Nam for progressive liberalisation in terms of specific commitments undertaken in line with their respective stage of development.

PART III: SPECIFIC COMMITMENTS

ARTICLE 17
Market Access

1. With respect to market access through the modes of supply identified in paragraph (aa) of Article 2 (Definitions) of this Agreement, a Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[7]

[7] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in paragraph (aa)(i) of Article 2

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2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[8]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(Definitions) of this Agreement and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in paragraph (aa)(iii) of Article 2 (Definitions) of this Agreement, it is thereby committed to allow related transfers of capital into its territory.

[8] Paragraph 2(c) of this Article does not cover measures of a Party which limit inputs for the supply of services.

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(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

ARTICLE 18
National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers[9].

2. A Party may meet the requirement of paragraph 1 of this Article by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

ARTICLE 19
Additional Commitments

[9] Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 17 (Market Access) and Article 18 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

ARTICLE 20
Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 17 (Market Access), Article 18 (National Treatment), and Article 19 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) the sectors in which such commitments are undertaken;
(b) terms, limitations and conditions on market access;
(c) conditions and qualifications on national treatment;
(d) undertakings relating to additional commitments; and
(e) where appropriate the timeframe for implementation of such commitments.

2. Measures inconsistent with both Articles 17 (Market Access) and 18 (National Treatment) shall be inscribed in the column relating to Article 17 (Market Access). In this case the inscription will be considered to provide a condition or qualification to Article 18 (National Treatment) as well.

3. Where commitments are undertaken on the movement of natural persons, they shall include any one or more of the categories of natural persons as defined in Annex on Movement of Natural Persons subject to paragraph 1 of this Article.

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4. The Parties' schedules of specific commitments shall be annexed to this Agreement upon completion of the negotiations and shall form an integral part thereof.

ARTICLE 21
Application and Extension of Commitments

1. India shall make a single schedule of specific commitments under Article 20 (Schedules of Specific Commitments) and shall apply this Schedule to Brunei Darussalam, Cambodia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam, and separate individual schedules of specific commitments to Indonesia and the Philippines, respectively.

2. Each ASEAN Member State shall make its individual schedule of specific commitments under Article 20 (Schedules of Specific Commitments) and shall apply this Schedule to India and the rest of the ASEAN Member States.

ARTICLE 22
Modification of Schedules

1. A Party may modify or withdraw any commitment in its Schedule, at any time after three years from the date on which that commitment has entered into force provided that:

(a) it notifies the Joint Committee on Services of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and

(b) it enters into negotiations with any affected Party to agree to the necessary compensatory adjustment.

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2. In achieving a compensatory adjustment, Parties shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than provided for in the Schedules prior to such negotiations.

3. Any compensatory adjustment pursuant to this Article shall be accorded on a non-discriminatory basis to all Parties.

4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be resolved under the ASEAN-India DSM Agreement. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article 21 (Application and Extension of Commitments), such a modification or withdrawal may be implemented solely with respect to the modifying Party.

PART IV: OTHER PROVISIONS

ARTICLE 23
Relation to Other Agreements

1. Each Party reaffirms its rights and obligations vis-à-vis another Party under the WTO Agreement and other agreements to which these Parties are party.

2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which these Parties are party.

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3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.

4. Nothing in this Agreement shall prevent any individual ASEAN Member State from entering into any agreement with any one or more ASEAN Member State and/or India.

5. This Agreement shall not apply to any agreement among ASEAN Member States or to any agreement between any ASEAN Member State and India unless otherwise agreed by the parties to that agreement.

ARTICLE 24
Annexes and Future Legal Instruments

1. The Annexes shall form an integral part of this Agreement.

2. The Parties may adopt legal instruments in the future pursuant to the provisions of this Agreement, including those proposed to them by the Joint Committee on Services. Upon their respective entry into force, such instruments shall form an integral part of this Agreement.

ARTICLE 25
Contact Point

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement, including the exchange of information relevant to the implementation and operation of this Agreement.



2. At the request of any Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

ARTICLE 26
Joint Committee on Services

1. A Joint Committee on Services shall be established under this Agreement within one year upon entry into force of this Agreement.

2. The functions of the Joint Committee on Services shall be to:

(a) review the implementation and operation of this Agreement;

(b) submit a report to the Parties on the implementation and operation of this Agreement;

(c) consider and recommend to the Parties any amendments to this Agreement;

(d) supervise and coordinate the work of all Sub-Committees established under this Agreement; and

(e) carry out other functions as may be agreed by the Parties.

3. The Joint Committee on Services:

(a) shall be composed of representatives of the Parties; and

(b) may establish Sub-Committees and delegate its responsibilities thereto.

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ARTICLE 27
Review

The Joint Committee on Services shall meet within one year from the date of entry into force of this Agreement to review the implementation and operation of this Agreement or as mutually agreed by the Parties. Thereafter, biennially or otherwise as appropriate the Joint Committee on Services shall review this Agreement, including for the purpose of progressively liberalising trade in services as well as developing disciplines and negotiating subsequent packages of commitments as may be agreed, with a view to facilitate the elimination of substantially all remaining discriminations between the Parties with regard to trade in services covered under this Agreement, including the Annex on Movement of Natural Persons.

ARTICLE 28
Miscellaneous Provisions

1. The GATS Annexes, namely: Annex on Movement of Natural Persons Supplying Services, Annex on Air Transport Services, Annex on Financial Services, and Annex on Telecommunications shall apply to this Agreement, *mutatis mutandis*.

2. This Agreement shall include (a) the Annexes including the Annex on Movement of Natural Persons agreed under this Agreement and the contents therein which shall form an integral part of this Agreement, and (b) all future legal instruments agreed pursuant to this Agreement.

3. Except as otherwise provided in this Agreement, this Agreement or any action taken under it shall not affect or nullify the rights and obligations of a Party under existing agreements to which it is a party.

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ARTICLE 29
Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed by the Parties.

ARTICLE 30
Dispute Settlement

Unless otherwise provided in this Agreement, any dispute concerning the interpretation, implementation, or application of this Agreement shall be resolved through the procedures and mechanisms as set out in the ASEAN-India DSM Agreement.

ARTICLE 31
Denial of Benefits

A Party may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

  (i) by a vessel registered under the laws of a non-Party; and

  (ii) by a person of a non-Party which operates and/or uses the vessel in whole or in part;

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(c) to a service supplier of another Party where a Party establishes that:

(i) where such service supplier is a natural person, such natural person is not a "natural person of another Party" as defined under this Agreement; and

(ii) where such service supplier is a juridical person, such person is not a "juridical person of another Party" as defined under this Agreement.

ARTICLE 32
Entry into Force

1. Each Party shall notify the other Party in writing upon completion of its internal requirements[10] necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2015 for any Party that has made such notifications provided that India and at least four (4) ASEAN Member States have made such notifications by that date.

2. If this Agreement does not enter into force on 1 July 2015 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1 of this Article, sixty (60) days after the date by which India and at least four (4) ASEAN Member States have made the notifications referred to in Paragraph 1 of this Article.

3. After the entry into force of this Agreement pursuant to Paragraph 1 or 2 of this Article, this Agreement shall enter into force for any Party sixty (60) days after the date of its notification referred to in Paragraph 1 of this Article.

[10] For greater certainty, the term *"internal requirements"* may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

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ARTICLE 33
Depositary

For the ASEAN Member States, this Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member State.

ARTICLE 34
Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving 12 months advance notice in writing to the other Parties.

2. This Agreement shall terminate if, pursuant to paragraph 1:

(a) India withdraws; or
(b) this Agreement is in force for less than four ASEAN Member States.

3. The other Parties may request in writing consultations concerning any matter that would arise from the withdrawal within 60 days after the date of receipt of the notice in paragraph 1 of this Article. The requested Party shall enter into consultations in good faith upon receipt of the request.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed the Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation between the Association of the Southeast Asian Nations and the Republic of India.

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DONE at Nay Pyi Taw, Myanmar this Thirteenth day of November in the year Two Thousand and Fourteenth

in two original copies in the English Language.

For Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

For the Republic of India:

NIRMALA SITHARAMAN
Minister of State for Commerce and Industry

For the Kingdom of Cambodia:

SUN CHANTHOL
Senior Minister and Minister of Commerce

For the Republic of Indonesia:

MUHAMMAD LUTFI
Minister of Trade

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For the Lao People's Democratic Republic:

KHEMMANI PHOLSENA
Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED
Minister of International Trade and Industry

For the Republic of the Union of Myanmar:

KAN ZAW
Union Minister for National Planning and Economic Development

For the Republic of the Philippines:

GREGORY L. DOMINGO
Secretary of Trade and Industry

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For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

CHUTIMA BUNYAPRAPHASARA
Permanent Secretary
Acting for the Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

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Annex on Movement of Natural Persons

For the purposes of this Agreement:

(a) **Business Visitor** means a natural person seeking to enter the territory of another Party temporarily, whose remuneration is derived outside that other Party:

(i) for negotiating sale of goods or supply of services on behalf of a service supplier of a Party where such negotiations do not involve making direct sales to the general public and the representative of the service supplier is not involved in supplying services directly; or

(ii) as an employee of a juridical person who is a manager, an executive or a specialist (as defined in paragraphs (c)(i), (c)(ii) and (c)(iii) of this Annex) for the purpose of establishing an investment or setting up a commercial presence for the juridical person in the territory of another Party; or

(iii) for the purpose of establishing an investment or setting up a commercial presence; or

(iv) for the purpose of participating in business negotiations or business meetings.

(b) **Contractual Service Supplier** [11] means an employee of a juridical person of a Party which

[11] For greater certainty, in the case of the Philippines, Contractual Service Supplier covers this definition, and also (a) is either an executive, manager, or specialist as may be specified in the schedule of commitments, and (b) has been an employee of

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does not have commercial presence in another Party where the services will be provided, who:

(i) enters the territory of that other Party temporarily in order to perform a service pursuant to a contract(s) between the employer and a service consumer(s)[12] in the territory of that other Party;

(ii) receives remuneration from his or her employer; and

(iii) must possess the appropriate educational and other qualifications relevant to the service to be provided and has obtained, wherever necessary, registration with the relevant professional body.

(c) **Intra-Corporate Transferee (ICT)** refers to an employee of a juridical person of a Party as defined in this Agreement who is transferred temporarily for the supply of a service through commercial presence in the territory of another Party, and has been an employee of that juridical person for a period as may be specified in the schedule of commitments, and who is:

(i) an **Executive**: a natural person within the organisation who primarily directs the management of the organisation and exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. Executives would not directly

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the juridical person for a period as specified in the schedule of commitments of each Party preceding the date of the application for entry or temporary stay.

[12] In the case of Indonesia, Thailand and Viet Nam, the service consumer(s) have to be juridical person(s).

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perform tasks necessary for the provision of the service to the extent that this does not prevent the Executive, in the course of executing his duties as described above, from performing such tasks as may be necessary for the provision of the service;

(ii) a **Manager**: a natural person within the organisation who primarily directs the organisation/department/ subdivision and exercises supervisory and control function over other supervisory, managerial or professional staff; does not include first line supervisors unless employees supervised are professionals, nor does it include employees who directly perform tasks necessary for the provision of the service provided that this does not prevent the Manager, in the course of executing his duties as described above, from performing tasks as may be necessary for the provision of the service; or

(iii) a **Specialist**: a natural person within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses relevant knowledge of the organisation's service, research equipment, techniques or management. A specialist may include, but is not limited to, members of a licensed profession.

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THE ASEAN SECRETARIAT