ANNEX 13a: MULTIMODAL CARRIER LIABILITY REGIME

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 the 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 on 26 November 1999 at Vientiane, 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 on 3 November 2002 at Phnom Penh, and acceded to by the Union of Myanmar on 19 September 2003 at Dali City (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 Article 34(a) of the Agreement, calling for this Annex to provide technical details,

HAVE AGREED AS FOLLOWS:

Article 1: Multimodal Carrier Liability Regime

The Multimodal Carrier Liability Regime shall be as prescribed in the attachment to this Annex, "Multimodal Transport Liability Regime".

Article 2: 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 3: Ratification or Acceptance

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.

Article 4: Entry into Force

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.

Article 5: Conforming National Law

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

Article 6: Reservations

No reservation to the Annex shall be permitted.

Article 7: 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 8: 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 9: Relationship of the Attachment to the Annex

The attachment shall form an integral part of the Annex and shall be equally binding.

Article 10: 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 11: Denunciation

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

Attachment to Annex 13a: Multimodal Transport Liability Regime

In witness whereof, the undersigned, being duly authorized, have signed this Annex.

Done at Phnom Penh on 30 April 2004 in six originals in the English language.

Signed:

For the Royal Government of Cambodia

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His Excellency Tram Iv Tek
Secretary of State, Ministry of Public Works and Transport

For the Government of the People's Republic of China

.....

His Excellency Hu Xijie
Vice Minister of Communications

For the Government of the Lao People's Democratic Republic

.....

His Excellency Sommad Pholsena
Vice Minister of Communication, Transport, Post and Construction

For the Government of the Union of Myanmar

.....

His Excellency Thura Thaung Lwin
Deputy Minister of Rail Transportation

For the Government of the Kingdom of Thailand

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His Excellency Nikorn Chamnong
Deputy Minister of Transport

For the Government of the Socialist Republic of Viet Nam

.....

His Excellency Pham The Minh
Vice Minister of Transport

ATTACHMENT: MULTIMODAL TRANSPORT LIABILITY REGIME

CHAPTER I
DEFINITIONS

Article 1

For the purposes of this Attachment:

"Carrier" means the person who performs or undertakes to perform the carriage, or part thereof, whether he is identical with the multimodal transport operator or not.

"Consignee" means the person entitled to receive the goods from the multimodal transport operator.

"Consignor" means the person who concludes the multimodal transport contract with the multimodal transport operator.

"Deliver", "Delivered" or "Delivery" means

(a) The handing over of the goods to the consignee, or
(b) The placing of the goods at the disposal of the consignee in accordance with the multimodal transport contract or with the law or usage of the particular trade applicable at the place of delivery, or
(c) The handing over of the goods to an authority or other third party to whom, pursuant to the law or regulations applicable at the place of delivery, the goods must be handed over.

"Goods" means any property, as well as containers, pallets or similar articles of transport or packaging not supplied by the multimodal transport operator, irrespective of whether such property is to be or is carried on or under deck.

"In writing" includes telegram, telex, fax or any other means which prints, records, repeats or transmits messages by mechanical, electronic or any other kind of instrument or apparatus intended for such purposes.

"International multimodal transport" means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as international multimodal transport.

"Mandatory law" means any law or international convention forming part of the national law relating to the carriage of goods, the provisions of which cannot be departed from by contractual stipulations detrimental to the consignor or consignee.

"Multimodal transport contract" means a contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport.

"Multimodal transport document" means a document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract.

"Multimodal transport operator" means any person who, on his own behalf or through another person acting on his behalf, concludes a multimodal transport contract and who acts as a principal, not as an agent of or on behalf of the consignor or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

"Special drawing right (SDR)" means the unit of account as defined by the International Monetary Fund.

"Taken in charge", "Taken the goods in his charge" or "Taking in charge" means that the goods have been handed over to and accepted for carriage by the multimodal transport operator.

CHAPTER II
SCOPE OF APPLICATION

Article 2

This Attachment shall apply to:

(a) All contracts of multimodal transport, if:

(i) The place for the taking in charge of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a Contracting Party, or

(ii) The place for delivery of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a Contracting Party.

Article 3

Whenever in this Attachment and in the rules adopted for the purpose of its implementation, any of the following terms is utilized for its application: "Multimodal Transport", "Multimodal Transport Operator", "Multimodal Transport Contract" or "Multimodal Transport Document", it shall be understood as being "International" in nature.

CHAPTER III
MULTIMODAL TRANSPORT DOCUMENT

Article 4

1. When the goods are taken in charge by the multimodal transport operator, he shall issue a multimodal transport document which, at the option of the consignor, shall be in either negotiable or non-negotiable form.

2. The multimodal transport document shall be signed by the multimodal transport operator or by a person having authority from him.

3. The signature on the multimodal transport document may be in the form of handwriting, print, perforated, stamped, symbols, or in any other mechanical, or electronic forms, not inconsistent with the laws of the country where the multimodal transport document is issued.

Article 5

1. The multimodal transport document shall contain the following particulars:

   (a) The general nature of the goods; the marks necessary for the identification of the goods; and express statement, if applicable, as to the dangerous or perishable character of the goods; the number of packages or pieces; and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;

   (b) The apparent condition of the goods;

   (c) The name and principal place of business of the multimodal transport operator;

   (d) The name of the consignor;

   (e) The consignee, if named by the consignor;

   (f) The place and date of taking in charge of the goods by the multimodal transport operator;

   (g) The place of delivery of the goods;

   (h) The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;

   (i) A statement indicating whether the multimodal transport document is negotiable or non-negotiable;

   (j) The place and date of issue of the multimodal transport document;

   (k) The signature of the multimodal transport operator or of a person having authority from him;

   (l) The freight for each mode of transport, if expressly agreed between the parties, or the freight, including its currency, to the extent payable by the consignee, or other indication that freight is payable by him;

   (m) The intended journey route, modes of transport and places of transshipment if known at the time the multimodal transport document is issued;

   (n) Any other particulars which the parties may agree to insert in the multimodal transport document, if not inconsistent with the law of the country where the document is issued.

2. The absence from the multimodal transport document of one or more of the particulars referred to in paragraph 1 of this Article shall not affect the legal character of the document as a multimodal transport document.

Article 6

1. The multimodal transport document shall be *prima facie* evidence of the taking in charge by the multimodal transport operator of the goods as described in that document unless a contrary indication, such as "shipper's weight, load and count", "shipper-packed container" or a similar expression, has been made in the printed text or superimposed on the document.

2. Proof to the contrary shall not be admissible when the multimodal transport document has been transferred, or the equivalent electronic data interchange message has been transmitted to and acknowledged by the consignee, who in good faith has relied and acted thereon.

CHAPTER IV
LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR

Article 7

The responsibility of the multimodal transport operator for the goods under the provisions of this Attachment covers the period from the time the multimodal transport operator has taken the goods in his charge to the time of their delivery.

Article 8

The multimodal transport operator shall be responsible for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the contract, as if such acts and omissions were his own.

Article 9

The multimodal transport operator undertakes to perform or to procure the performance of all acts necessary to ensure delivery of the goods:

(a) when the multimodal transport document has been issued in a negotiable form "to bearer", to the person surrendering one original of the document, or

(b) when the multimodal transport document has been issued in a negotiable form "to order" to the person surrendering one original of the document duly endorsed, or

(c) when the multimodal transport document has been issued in a negotiable form to a named person, to that person upon proof of his identity and surrender of one original document; if such document has been transferred "to order" or in blank, the provisions of (b) above apply, or

(d) when the multimodal transport document has been issued in a non-negotiable form, to the person named as consignee in the document upon proof of his identity, or

(e) when no document has been issued, to a person as instructed by the consignor or by a person who has acquired the consignor's or the

consignee's rights under the multimodal transport contract to give such instructions.

Article 10

1. The multimodal transport operator shall be liable for loss resulting from loss of or damage to the goods, as well as loss resulting from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in Article 7, unless the multimodal transport operator proves that he, his servants or agents or any other person referred to in Article 8 took all measures that could reasonably be required to avoid the occurrence and its consequences.

2. However, the multimodal transport operator shall not be liable for loss following from delay in delivery unless the consignor has made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

Article 11

1. Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent multimodal transport operator, having regard to the circumstances of the case.

2. If the goods have not been delivered within ninety consecutive days following the date of delivery determined in accordance with the preceding paragraph, any person entitled to claim the goods may, in the absence of evidence to the contrary, treat the goods as lost.

Article 12

Notwithstanding the provisions of Article 10, the multimodal transport operator shall not be liable for loss, damage or delay in delivery with respect to goods carried if he proves that the event which caused such loss, damage or delay occurred during that carriage in one or more of the following circumstances:

(a) Force majeure

(b) Act or neglect of the consignor, the consignee or his representative or agent;

(c) Insufficient or defective packaging, marking, or numbering of the goods;

(d) Handling, loading, unloading, stowage of the goods effected by the consignor, the consignee or his representative or agent;

(e) Inherent or latent defect in the goods;

(f) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;

(g) With respect to goods carried by sea or inland waterways, when such loss, damage, or delay during such carriage has been caused by:

(i) act, neglect, or default of the master, mariner, pilot or the servant of the carrier in the navigation or in the management of ship, or

(ii) fire unless caused by the actual fault or privity of the carrier.

However, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the multimodal transport operator can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

Article 13

1. Assessment of compensation for loss of or damage to the goods shall be made by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, they should have been so delivered.

2. The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price, or if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

CHAPTER V
LIMITATION OF LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR

Article 14

Unless the nature and value of the goods have been declared by the consignor before the goods have been taken in charge by the multimodal transport operator and inserted in the multimodal transport document, the multimodal transport operator shall in no event be or become liable for any loss or damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2.00 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

Article 15

Where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in the multimodal transport document as packed in such article of transport shall be deemed packages or shipping units. Except aforesaid, such article of transport shall be considered the package or unit.

Article 16

Notwithstanding the provisions of Articles 14 and 15, if the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator shall be limited to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged.

Article 17

When the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which an applicable international convention or mandatory law would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of the multimodal transport operator's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory law.

Article 18

If the multimodal transport operator is liable in respect of loss following from delay in delivery, or consequential loss or damage other than loss of or damage to the goods, his liability shall be limited to an amount not exceeding the equivalent of the freight under the multimodal transport contract for the multimodal transport.

Article 19

The aggregate liability of the multimodal transport operator shall not exceed the limits of liability for total loss of the goods.

Article 20

The multimodal transport operator is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of the multimodal transport operator done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

CHAPTER VI
LIABILITY OF THE CONSIGNOR

Article 21

1. The consignor shall be deemed to have guaranteed to the multimodal transport operator the accuracy, at the time the goods were taken in charge by the multimodal transport operator, of all particulars relating to the general nature of the goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods as furnished by him or on his behalf for insertion in the multimodal transport document.

2. The consignor shall mark or label dangerous goods in accordance with international conventions or any national legislation which may also apply.

3. Where the consignor hands over dangerous goods to the multimodal transport operator or any person acting on his behalf, the consignor shall inform him of the dangerous character of the goods, and, if necessary, the precautions to be taken. If the consignor fails to do so and the multimodal transport operator does not otherwise have knowledge of their dangerous character:

   (a) The consignor shall be liable to the multimodal transport operator for all loss resulting from the shipment of such goods; and

(b) The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.

4. The provisions of paragraph 3 of this Article may not be invoked by any person if during the multimodal transport he has taken the goods in his charge with knowledge of their dangerous character.

5. If, in cases where the provisions of paragraph 3 (b) of this Article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average, or where the multimodal transport operator is liable in accordance with the provisions of Articles 10 and 11.

6. The consignor shall indemnify the multimodal transport operator against any loss resulting from any inaccuracies in or inadequacies of the particulars referred to in the preceding paragraphs.

7 The consignor shall remain liable even if the multimodal transport document has been transferred by him.

8. The right of the multimodal transport operator to such indemnity shall in no way limit his liability under the multimodal transport contract to any person other than the consignor.

CHAPTER VII
NOTICES, CLAIMS, ACTIONS AND TIME-BAR

Article 22

1. Unless notice of loss of or damage to the goods, specifying the general nature of such loss or damage, is given in writing by the consignee to the multimodal transport operator when the goods were handed over to the consignee, such handing-over is *prima facie* evidence of the delivery by the multimodal transport operator of the goods as described in the multimodal transport document.

2. Where the loss or damage is not apparent, the same *prima facie* effect shall apply if notice in writing is not given within six consecutive days after the day when the goods were handed over to the consignee.

Article 23

Unless otherwise expressly agreed, any action relating to multimodal transport under this Attachment shall be time-barred unless court or arbitration proceedings are instituted within a period of nine months after the delivery of the goods or, if they have not been delivered, after the date on which the goods should have been delivered or after the date on which, in accordance with the provisions of Article 11, paragraph 2, failure to deliver the goods would give the consignee the right to treat the goods as lost.

Article 24

1. The provisions in this Attachment shall apply to all claims against the multimodal transport operator relating to the performance of the multimodal transport contract, whether the claim be founded in contract or in tort.

2. Similarly, they shall apply whenever claims relating to the performance of the multimodal transport contract are made against any servant, agent or other person whose services the multimodal transport operator has used in order to perform the multimodal transport contract, whether such claims are founded in contract or in tort, and the aggregate liability of the multimodal transport operator and such servants, agents or other persons shall not exceed the limits in Articles 14 to 19.

3. Notwithstanding paragraph 2, a servant or agent of the multimodal transport operator or other person of whose services he makes use for the performance of the multimodal transport contract is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of such servant, agent or other person done with the intent to cause such loss, damage, or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

CHAPTER VIII
JURISDICTION AND COMPETENCE

Article 25

1. In judicial proceedings relating to international multimodal transport under this Attachment, the plaintiff, at his option, may institute an action in a court which, according to the law of the country where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

   (a) The principal place of business or, in the absence thereof, the habitual residence of the defendant; or

   (b) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

   (c) The place of taking the goods in charge for the multimodal transport or the place of delivery; or

   (d) Any other place designated for that purpose in the multimodal transport contract and evidenced in the multimodal transport document.

2. Notwithstanding the provisions of paragraph 1 of this Article, an agreement made by the parties after a claim has arisen, which designates the place where the plaintiff may institute an action, shall be effective.

Article 26

1. Subject to the provisions of this Article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to international multimodal transport under this Attachment shall be referred to arbitration.

2. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

   (a) A place in a State within whose territory is situated;

      (i) The principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or

      (ii) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

      (iii) The place of taking the goods in charge for the multimodal transport or the place of delivery: or

   (b) Any other place designated for that purpose in the arbitration clause or agreement.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Attachment.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement and any term of such clause or agreement which is inconsistent therewith shall be null and void.

5. Nothing in this Article shall affect the validity of an agreement on arbitration made by the parties after the claim relating to the international multimodal transport has arisen.

Article 27

1. Any stipulation in the multimodal transport document shall be null and void and shall produce no effect if it either directly or indirectly departs from the provisions of this Attachment and, specifically if stipulations are made that are prejudicial to the consignor or the consignee. This shall not affect the other stipulations contained in the document.

2. Notwithstanding the provisions of paragraph 1 of this Article, the multimodal transport operator may, with the consent of the consignor, increase his responsibilities and obligations under the provisions of this Attachment.

Article 28

The provisions of this Attachment shall not prevent the application of the rules pertaining to general average adjustment contained in the multimodal transport contract or in the relevant national law, to the extent that they are applicable.