



MEMORANDUM OF UNDERSTANDING ON THE IMPLEMENTATION OF THE ASEAN SINGLE WINDOW PILOT PROJECT

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

DESIRING to implement the ASEAN Single Window (hereinafter referred to as "ASW") Pilot Project in a simulation environment to enable assessment of benefits and challenges of the implementation of the ASW;

RECALLING that the 2nd ASW Steering Committee (hereinafter referred to as "ASWSC") Meeting held in Bali on 7-9 April 2008 affirmed and agreed to develop a Technical Prototype for the ASW Pilot Project using the federated/regional approach, as clarified at the 5th ASWSC Meeting held in Ha Noi on 4-6 February 2010 pursuant to the decision of the 2nd Meeting of the ASEAN Economic Community Council held in Cha-am Hua Hin on 22 October 2009;

NOTING that the ASW Pilot Project will be supported by ASW Working Groups under the direction of the ASWSC, the expert teams of the ASW Working Groups and the ASEAN Secretariat;

AFFIRMING that the terms of this Memorandum of Understanding are based on the objectives, principles and obligations enshrined under the Agreement to Establish and Implement the ASEAN Single Window signed in Kuala Lumpur on 9 December 2005 (hereinafter referred to as "ASW Agreement") and the Protocol to Establish and Implement the ASEAN Single Window signed in Kuala Lumpur on 20 December 2006 (hereinafter referred to as "ASW Protocol"); and

RECOGNISING the importance of establishing an enabling legal and regulatory framework based on international standards and best practices for the implementation of the ASW as mandated under Article 6 of the ASW Agreement, while taking into account ASEAN Member States' national legislation;

HAVE AGREED as follows:

PART A – GENERAL REQUIREMENTS

Article I Objectives

1. Participants shall, subject to the terms of this Memorandum of Understanding and legal and regulatory framework from time to time in force, implement the ASW Pilot Project by testing the Technical Prototype for the ASW Pilot Project with test data and information through the standardisation and simplification of documents, information, data and processes as well as the application of information and communication technology for regional data exchange.

2. In implementing the ASW Pilot Project, Participants shall apply the federated/regional approach, which is defined as follows:

“The ASW is the secured environment where National Single Windows (NSWs) integrate and operate. The ASW constitutes a regional facility to enable a seamless, standardised and harmonised routing and communication of trade and customs related information and data for customs clearance and release from and to NSWs. Trade and related customs data and information will stay within, and belong to respective Member States.”

3. For the purpose of paragraph 2, the ASW shall not maintain or retain any trade and related customs data or information that may be transmitted from or to ASW, including

for only transmission or temporary purposes. For avoidance of doubt, this paragraph does not prohibit the ASW from maintaining records of transmission of such trade and related customs data or information, which does not include the data or information being transmitted.

4. Objectives of the ASW Pilot Project shall be:

- (a) to develop the Technical Prototype for the ASW Pilot Project as recommended by the Working Group on Technical Matters for the ASW (TWG);
- (b) to test the technical features of the Technical Prototype for the ASW Pilot Project such as security protocols, communication protocols, interfaces, messaging, data reference, routing and synchronising functions, among others;
- (c) to streamline and standardise data elements and documents;
- (d) to develop efficient business processes for purposes of implementing the ASW Pilot Project;
- (e) to study and develop a simulated legal and regulatory framework in a controlled and simulated environment in which to operate the Technical Prototype for the ASW Pilot Project for the purpose of implementing the ASW Pilot Project, as appropriate;

- (f) to develop and deliver outreach programmes, including publication of news and awareness to the general public;
- (g) to strengthen partnership with stakeholders;
- (h) to conduct activities of capacity building on the technical features of the Technical Prototype for the ASW Pilot Project and legal issues of the ASW;
- (i) to make a thorough assessment of the Technical Prototype for the ASW Pilot Project to identify benefits and challenges of its design and implementation; and
- (j) to identify respective roles and functions of the NSWs and the ASW within the ASW Pilot Project.

5. This Memorandum of Understanding shall serve to implement the ASW Pilot Project in accordance with the ASWSC Work Programme for its implementation.

Article II

Definitions and Interpretations

For purposes of this Memorandum of Understanding:

- (a) "Confidential information" means data and/or information that is designated as "confidential" by

any Participant from whom the data and/or information originates;

- (b) "Legal and regulatory framework" used herein, are applicable laws, regulations, administrative guidelines and ASEAN treaties that are required to support transactions within the ASW Pilot Project;
- (c) "Administrative guidelines" shall refer to those policies relating to NSWs or ASW that are endorsed and announced by the Government of an ASEAN Member State, and made publicly available in a written form;
- (d) "Participant" means an ASEAN Member State which participates in the ASW Pilot Project. It is understood that ASEAN Member States that will not be able to participate in the ASW Pilot Project may become Observers. The list of Observers which is appended as ANNEX A shall form as an integral part of this Memorandum of Understanding. For the avoidance of doubt, Observers' obligations do not include the obligations pertaining only to Participants. Observers' obligations shall include obligations under Article VIII (Confidentiality) and Part B (Legal and Regulatory Requirements), where applicable. Where an Observer wishes to change its status to a Participant, the Observer concerned shall, upon the completion of its internal procedures, notify in writing its intention to do so to other ASEAN Member States, and shall be bound by the same

terms and conditions of this Memorandum of Understanding effective on the date of its written notification;

- (e) "Trade and related customs data or information" means ASW and NSW data, information, and records of any nature that are created, stored, and processed primarily in electronic form.

Article III Implementation

1. Participants shall apply the federated/regional approach as provided in paragraphs 2 and 3 of Article I to implement the ASW Pilot Project.
2. Where possible, Participants shall use the ASEAN Data Model and its relevant documents in activities and operations of the ASW Pilot Project.
3. Participants shall use test data in electronic format that is functionally equivalent to paper-based documents.
4. Participants shall use standardised business and other processes as established by the TWG for the implementation of the ASW Pilot Project.
5. For the purpose of developing the Technical Prototype for the ASW Pilot Project, its technical specifications shall be formulated by the TWG with reference to the "Technical

Structure of the ASW Pilot Project", appended as ANNEX B, which shall form as an integral part of this Memorandum of Understanding.

6. Participants shall use identified documents for the purpose of the ASW Pilot Project as identified by the TWG.

Article IV

Scope of the ASW Pilot Project

The scope of the ASW Pilot Project shall include, among others:

- (a) Use of standardised languages and interface protocols for transmission and communications within ASW using relevant international standards as determined by TWG;
- (b) Continue developing the ASEAN Data Model using relevant international standards as determined by TWG;
- (c) Develop open standard for interconnectivity and interoperability of the ASW Pilot Project which operates amongst the Participants;
- (d) Application of standardised messaging standards and its harmonisation to the extent agreed by the Participants which comprise of messaging

standards of processing systems at the national and regional levels, as required;

- (e) Application of standardised communication protocols and their harmonisation to the extent agreed by the Participants;
- (f) Application of standardised business processes for transmission of data and information and verification of integrity of transmitted data and information taking into consideration the current processes in use by end-users of Government-to-Government, Business-to-Government, Business-to-Business and Government-to-Business relationships;
- (g) Application of standardised security protocols including encryption, for request, receipt, transmission and dissemination of information to identified users;
- (h) Where appropriate, application of simulated standardised Service Level Agreements in ensuring a viable and efficiently functioning Single Window environment and simulated Interconnection Security Agreements;
- (i) Test and assess the technical design of the Technical Prototype for the ASW Pilot Project;

- (j) Application of current legal and regulatory framework of the Participants for the operation of the ASW Pilot Project;
- (k) Study and develop a simulated legal and regulatory framework to operate the Technical Prototype for the ASW Pilot Project;
- (l) Where appropriate, application of standardised technical features for the Technical Prototype for the ASW Pilot Project using Service-Oriented Architecture;
- (m) Identify issues related to mutual recognition and certification authorities for message exchange and communication;
- (n) Develop an open technical architecture that is technology neutral in design and application;
- (o) Conduct activities of capacity building in the following areas:
 - (i) data harmonisation and mapping with a view to building up the autonomous technical capability of the experts of Participants;
 - (ii) mapping business processes;
 - (iii) developing the technical architecture and security measures;

- (iv) legal issues of the ASW;
- (p) Implement the ASW Pilot Project using test data;
- (q) Develop and test contingency plan, disaster recovery plan and data breach notification system; and
- (r) Conduct a review and a Cost Benefit Analysis for the ASW Pilot Project to evaluate and identify the benefits and challenges of the Technical Prototype for the ASW Pilot Project.

Article V

Participants' Obligations

1. Each Participant shall, subject to the terms of this Memorandum of Understanding and legal and regulatory framework from time to time in force, agree to:

- (a) provide technical and legal personnel resources as may be required to carry out its duties under the ASW Pilot Project;
- (b) perform any and all acts necessary to test the interconnectivity and interoperability of the NSWs of Participants within the framework of the ASW Pilot Project, provided that Participants which do not

have operational NSWs may use simulated NSWs for the purpose hereof;

- (c) carry out the tasks and activities described in this Memorandum of Understanding in accordance with the timelines that have or will be agreed upon;
- (d) mobilise the support and active participation of key players of the ASW Pilot Project, namely, governmental agencies, businesses and industries/individuals and logistics operators for the purposes of the ASW Pilot Project; and
- (e) endeavor to raise awareness on the ASW Pilot Project amongst the key players as identified in subparagraph (d) above.

2. Participants shall study and develop a simulated legal framework to address the legal issues directly related to the objectives of this Memorandum of Understanding to carry out the implementation of the activities of the ASW Pilot Project taking into account the matters covered in Part B of this Memorandum of Understanding.

3. Participants agree that the principles embodied in the United Nations Convention on the Use of Electronic Communications in International Contracts (hereinafter referred to as "Electronic Communications Convention") will be deemed to apply, if appropriate, to cross-border transactions involving electronic communications between the NSWs and the ASW,

as well as among NSWs, during the implementation of the ASW Pilot Project.

4. Participants may consider the need for enactment of domestic legislation for their NSWs that is based on Electronic Communications Convention with additional consideration towards the UNCITRAL Model Law on Electronic Commerce, in order to implement the ASW Pilot Project in a simulation environment, with appropriate legal structure.

Article VI

Monitoring and Reporting Mechanism

1. The ASWSC shall monitor the implementation of the ASW Pilot Project, which will be conducted by the TWG and the Working Group on Legal and Regulatory Matters for the ASW (LWG).

2. The TWG and the LWG shall report the implementation progress of the ASW Pilot Project to the ASWSC which will report to the ASEAN Senior Economic Officials and the ASEAN Directors-General of Customs and subsequently to the ASEAN Economic Ministers and the ASEAN Finance Ministers.

Article VII

Support

The ASEAN Secretariat shall provide support to the activities of the ASW Pilot Project.

Article VIII Confidentiality

1. Each ASEAN Member State shall undertake to observe the confidentiality and secrecy of documents, information and other data received from, or supplied to other ASEAN Member States during the period of the implementation of this Memorandum of Understanding.

2. Each ASEAN Member State shall not:

- (a) directly or indirectly disclose any Confidential information provided by other Participants; nor
- (b) use Confidential information provided by another Participant for any purpose other than for those specified in this Memorandum of Understanding without the prior authorisation of such Participant.

3. ASEAN Member States agree that the Article VIII, paragraphs 1 and 2, shall continue to be binding between them notwithstanding the withdrawal from, or suspension or termination of this Memorandum of Understanding.

PART B – LEGAL AND REGULATORY REQUIREMENTS

Article IX

Information Sharing and Exchange of Information

1. Participants shall study and identify the requirements of an adequate legal framework to enable operations of the ASW Pilot Project and permit cross-border exchange of test data and documents for the purpose of implementing the ASW Pilot Project.
2. Where appropriate, Participants may establish policies and regulations, and may enter into Memoranda of Understanding and/or Interconnection Security Agreements for the sharing, use, and dissemination of test data and information for the domestic government usage, and for the mutual recognition of such data and information of other Participant being communicated within the ASW Pilot Project.
3. Each Participant agrees that test data and information provided from another Participants' NSW shall be used and maintained only in furtherance of the objectives of the ASW Pilot Project and only under conditions of confidentiality, in a secure environment, and solely for the specific purposes of this Memorandum of Understanding.
4. To the extent that the Technical Prototype for the ASW Pilot Project transmits, for reasons of operational efficiency, information or documents provided by Participants during the course of the implementation of the ASW Pilot Project, ASEAN Member States shall comply with the terms and conditions of

this Memorandum of Understanding, including information security, privacy and other document requirements, and shall ensure that the operator of the Technical Prototype for the ASW Pilot Project as designated by ASEAN Member States complies with the terms and conditions of this Memorandum of Understanding, where relevant.

5. Limitations on sharing of data and information may be established in agreements between any of the Participants, if necessary.

6. Data and information which are furnished by a trader to its NSW shall only be transmitted to another NSW under the ASW Pilot Project with the prior consent of the trader.

Article X

Information Security

1. Each ASEAN Member State agrees that it shall be responsible for protecting the security and privacy of the data in their respective NSW information systems, including data transmitted by other ASEAN Member States. Article X, paragraph 1, shall continue to be binding between the ASEAN Member States notwithstanding the withdrawal from, or suspension or termination of this Memorandum of Understanding.

2. Participants shall study the adequacy of the legal and regulatory framework and technical infrastructure in providing for privacy and security protections for all sensitive and

personally identifiable information, financial, confidential, trade secret, proprietary, and law enforcement data and information in the ASW and NSW systems within the ASW Pilot Project.

3. Participants shall study and identify information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorised access, use, disclosure, theft or loss of sensitive information collected or used in the system. Information security shall include technical, managerial and operational security controls that are appropriate for the type of data and information for which it is responsible, and shall include user identification and authentication, user provisioning and identity management, authorisation and access control, audit and logging, encryption, boundary protection, system monitoring, security incident handling, secure data storage, personnel security, physical and environment protection.

Article XI

Registration and Authentication of Private Sector Users

1. Subject to the terms of this Memorandum of Understanding, Participants shall register all non-governmental and governmental entities, including individuals, companies, and organisations, that will be permitted access to their NSW for purposes of providing or receiving information and/or documents to or from the NSW and shall establish authentication procedures in accordance with technical standards developed for the NSWs and for the ASW Pilot Project.

2. Participants shall maintain a secure and updated registry listing of all authorised registered users.

3. Authorised registered users of a Participant's NSW shall not be permitted access to information or data other than those information or data for which access has been authorised by law or regulation.

4. In the event that Participants determine that documents or forms submitted by private sector end-users are to include authentication by a Certification Authority (CA), the receiving Participant/s shall ascertain the level of recognition to be accorded to the CA authentication, and in relation thereto, the following shall be considered:

- (a) Whether the CA is to be duly authorised under the law of the Participant;
- (b) Whether such authentication is to be in accordance with standards mutually agreed between the CA regulating authorities of the Participants;
- (c) Whether the CA is to indemnify a receiving Participant that has relied on the CA authentication of a document or form for any damages that it may incur provided such damages were reasonably the result of the CA's negligence or willful acts or omissions;

- (d) Whether the CA will be permitted to limit its liability for errors and omissions with respect to the authentication service it provides; and
- (e) Whether the CA that provides authentication services for documents submitted to a Participant, its NSW, other Participants' NSW, and/or the Technical Prototype for the ASW Pilot Project, should submit to personal jurisdiction before the courts or other adjudicative body of a Participant that has claimed to have suffered damages or other injuries as a result of the alleged negligence or other wrongful act of the CA.

Article XII

Privacy and Integrity of Data

1. If Confidential information (including sensitive and personally identifiable information) is to be transmitted by the Technical Prototype for the ASW Pilot Project or any NSW, ASEAN Member States shall ensure that there is no unlawful disclosure or interception of such Confidential information (including sensitive and personally identifiable information).
2. Each ASEAN Member State shall protect Confidential information including sensitive and personally identifiable information, and trade-sensitive information about companies participating in the ASW Pilot Project and in NSWs from unlawful access, use and disclosure.

3. Participants shall develop incident response procedures and in the event of a data breach, a Participant's NSW, or if the breach involves the Technical Prototype for the ASW Pilot Project, the responsible officials shall notify the designated officials at other NSW operations as soon as is practically possible.

4. Article XII, paragraphs 1 and 2, shall continue to be binding between the ASEAN Member States notwithstanding the withdrawal from, or suspension or termination of this Memorandum of Understanding.

Article XIII

Data and Information Transmission

All data and information provided by Participants' NSWs shall pass through the Technical Prototype for the ASW Pilot Project for immediate transmittal to other NSWs, but no such data and information shall be retained and maintained in the Technical Prototype for the ASW Pilot Project. This Article shall continue to be binding between the ASEAN Member States notwithstanding the withdrawal from, or suspension or termination of this Memorandum of Understanding.

Article XIV

Cooperation Amongst Governmental Agencies in charge of NSW

Subject to the terms of this Memorandum of Understanding, laws, rules, regulations and national policies from time to time in force in each ASEAN Member State, ASEAN Member States shall provide assistance to each other in the form of sharing information and experience in relation to the establishment of their NSWs. In relation thereto, ASEAN Member States may establish information sharing procedures between and among themselves commensurate with the objectives of the ASW Pilot Project.

Article XV

Suspension

Each ASEAN Member State reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this Memorandum of Understanding which suspension shall take effect immediately after notification has been given to the other ASEAN Member State through diplomatic channels or the ASEAN Secretariat.

Article XVI

Dispute Settlement

Any difference or dispute between Participants concerning the interpretation and/or implementation and/or application of any of the provisions of this Memorandum of Understanding shall be settled amicably through mutual consultation and/or negotiations between Participants without reference to any third party or international tribunal.

Article XVII

Evaluation

As part of the ASW Pilot Project, Participants will conduct a comprehensive evaluation of outcomes achieved for the purpose of identifying the adequate and enabling environment of technical and legal requirements of the ASW.

Article XVIII

Revision, Modification and Amendment

1. Any Participant may request in writing a revision, modification or amendment of all or any part of this Memorandum of Understanding.
2. Any revision, modification or amendment agreed to by Participants shall be reduced into writing and shall form part of this Memorandum of Understanding.

3. Such revision, modification or amendment shall come into force on such date as may be determined by Participants.

4. Any revision, modification or amendment shall not prejudice the rights and obligations arising from or based on this Memorandum of Understanding before or up to the date of such revision, modification or amendment.

Article XIX

Entry into Force, Duration, Withdrawal and Termination

1. This Memorandum of Understanding shall enter into force on the date of signing and shall remain in force for a period of 2 years.

2. Thereafter, it shall be automatically extended for a further period of 1 year.

3. Notwithstanding anything in this Article, any ASEAN Member State may withdraw from this Memorandum of Understanding by notifying the other ASEAN Member States of its intention to withdraw from this Memorandum of Understanding by a notice in writing through diplomatic channels or through the ASEAN Secretariat, at least three (3) months prior to its withdrawal from the Memorandum of Understanding.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have entered into and signed this Memorandum of Understanding on the Implementation of the ASW Pilot Project.

DONE on this 18th Day of July in the Year of Two Thousand and eleven, in a single copy in the English language.

**ANNEX A TO THE MEMORANDUM OF UNDERSTANDING ON THE
IMPLEMENTATION OF THE ASEAN SINGLE WINDOW PILOT
PROJECT**

LIST OF OBSERVERS

Pursuant to Article II of the Memorandum of Understanding on the Implementation of the ASEAN Single Window Pilot Project, this ANNEX A provides the list of Observers for the implementation of the ASW Pilot Project. The list of Observers is as follows:

- (i) the Kingdom of Cambodia;
- (ii) the Lao People's Democratic Republic; and
- (iii) the Union of Myanmar.

ANNEX B TO THE MEMORANDUM OF UNDERSTANDING ON THE IMPLEMENTATION OF THE ASEAN SINGLE WINDOW PILOT PROJECT

TECHNICAL STRUCTURE OF THE ASW PILOT PROJECT

1. Pursuant to Article III of the Memorandum of Understanding on the Implementation of the ASEAN Single Window Pilot Project, this ANNEX B provides the Technical Structure of the ASW Pilot Project.

2. There will be three components under the ASW Pilot Project, namely:

2.1 Component 1:

- (a) Develop Technical Specifications and functions towards the development of the technical prototype;
- (b) Develop the overall architecture;
- (c) Define network requirements to the environment;
- (d) Confirm the applications and software required;
- (e) Gather requirements of communication and define the communication mechanisms among NSWs (Servers of the environment);
- (f) Gather requirements of information exchange;
- (g) Confirm the information routing mechanisms;
- (h) Define the security architecture of the system and confirm security measures;
- (i) Analyse the suitability of the physical location of the hub server for the purpose of this network; and
- (j) Others.

2.2 Deliverables of Component 1:

- (a) Analysis of models of the technical prototype of the ASW Pilot Project;
- (b) Identify requirements of infrastructures and software for the environment of information exchange;

- (c) Confirm expected volumes of transactions of information to be exchanged;
- (d) Provide acceptance criteria;
- (e) Establish recommendations on technical matters for the information exchange in a secured network on a trial basis;
- (f) Develop the template Service Level Agreement; and
- (g) Others.

2.3 Component 2:

- (a) Establish the schedules of technical testing and roll-out of the networks;
- (b) Conduct the technical testing in a simulation environment;
- (c) Develop the Training Manual and conduct trainings to end-users;
- (d) Set up the infrastructure in cooperation with Member States;
- (e) Document technical aspects of the networks;
- (f) Develop Standard Operation Procedures for the operations of the ASW Pilot Project during the trial period;
- (g) Implement necessary security measures; and
- (h) Others.

2.4 Deliverables of Component 2:

- (a) Establish schedules of technical testing;
- (b) Establish schedules of the roll-out;
- (c) Establish Training Manuals;
- (d) Conduct necessary training;
- (e) Install the network;
- (f) Conduct the information exchange during the trial period;
- (g) Establish Standard Operation Procedures of information exchange;
- (h) Provide system documentation (e.g. installation, testing, service and maintenance); and
- (i) Others.

2.5 Component 3:

- (a) Evaluate the outcomes and findings from operations and functions of the technical prototype;
- (b) Establish recommendations for ways forward;
- (c) Assess the costs and benefits as well as the suitability of the technical prototype as well as required enhancement.

2.6 Deliverables of Component 3:

- (a) Evaluation Report and respective recommendations.

EXPLANATORY NOTE TO MEMORANDUM OF UNDERSTANDING ON THE IMPLEMENTATION OF THE ASEAN SINGLE WINDOW PILOT PROJECT

1. This Explanatory Note sets out the agreed understanding on the interpretation of the Memorandum of Understanding on the Implementation of the ASEAN Single Window Pilot Project (hereinafter referred to as the "MOU on the ASW Pilot Project"), in light of the decision of the Second Meeting of the ASEAN Economic Community Council held in Cha-am Hua Hin on 22 October 2009 and the decision of the 5th ASWSC Meeting held in Hanoi on 4-6 February 2010.

2. For greater certainty, in Article I, the "federated/regional approach" shall not include a centralized facility (i.e. separate server) connecting the ten NSWs; instead electronic communications from one NSW to another NSW are channeled through the ASW environment. As the ASW will not feature any centralized facility, the ASW environment will not retain any trade and related customs data or information that may be transmitted from or to any NSW, including for only transmission or temporary purposes. Pursuant to the MOU on the ASW Pilot Project, confidentiality and security of data shall be observed. References to the ASW in the MOU on the ASW Pilot Project shall be construed accordingly.

3. For the purposes of paragraph 3 of Article V, and Article XIII, references to electronic communications between an NSW and the ASW shall be construed as referring to electronic communications between the NSWs within the ASW environment.