

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE REPUBLIC OF
THE PHILIPPINES
CONCERNING
THE STATUS OF VISITING FORCES OF EACH STATE
IN THE TERRITORY OF THE OTHER STATE

(Canberra, 31 May 2007)

Not yet in force
[2007] ATNIF 14

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES CONCERNING
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The **GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES** (hereinafter called the "Philippine Government") and the **GOVERNMENT OF AUSTRALIA** (hereinafter called the "Australian Government") hereinafter collectively referred to as "Parties":

IN PURSUANCE OF the purpose and objectives of the Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of Australia on Cooperative Defence Activities signed on 22 August 1995 in Canberra, Australia;

CONSIDERING that cooperation between the Philippine Government and the Australian Government promotes their common security interests;

CONSIDERING that from time to time, by arrangement between the Philippine Government and the Australian Government, elements of the Forces of one Party may be sent to visit the territory of the other Party;

DESIRING to establish the status of Visiting Forces of the Sending Party when in the territory of the Receiving Party; and

ACKNOWLEDGING their intention to fulfil their international commitments;

HAVE AGREED as follows:

**ARTICLE 1
DEFINITIONS**

As used in this Agreement the expression:

- (a) "Forces" means the personnel belonging to the land, sea or air armed services of a Party;
- (b) "Authorities of the Receiving State" means the authority or authorities authorized or designated under the law of the Receiving State or by the Government of the Receiving State for the purpose of exercising the powers and responsibilities in relation to which the expression is used;
- (c) "Authorities of the Sending State" means the authority or authorities authorized or designated under the law of the

Sending State or by the Government of the Sending State for the purpose of exercising the powers and responsibilities in relation to which the expression is used;

- (d) "Authority" or "Authorities" means the authority or authorities authorized or designated under the law of a Party or by the Government of a Party for the purpose of exercising the powers and responsibilities in relation to which the expression is used;
- (e) "Civilian Component" means the civilian personnel accompanying the Visiting Force who are employed in the service of or contracted by the Ministry/Department of Defence or Forces of the Sending State, and who are not stateless persons, nor nationals of, nor ordinarily resident in, the Receiving State;
- (f) "Classified Information" means official information that requires protection in the interest of national security and is so designated by the application of a security classification. This information may be in oral, visual, electronic, documentary or material form, including equipment or technology;
- (g) "Motor Vehicles" means all motor vehicles, including motor cycles;
- (h) "Official Motor Vehicles" means motor vehicles, including hired motor vehicles, which are exclusively in the service of the Visiting Force;
- (i) "Official Duty" means acts performed, or words spoken or written, by members of the Visiting Force or its Civilian Component in accordance with the duties required or authorized to be done by statute, regulation, order of a superior or military usage, in the conduct of combined training, exercises or other activities mutually approved by the Parties. Official duty is not meant to include every act by a member of the Visiting Force or its Civilian Component during the period while he or she is on duty, but is meant to apply only to acts that are required or authorized to be performed as a function of that duty which the individual is performing.
- (j) "Receiving State" means the State of the Party in whose territory the Visiting Force is located, or as the context requires, the territory of that Party;
- (k) "Sending State" means the Party to which the Visiting Force belongs;

- (l) "Service Authorities" means the authorities empowered by the law of the Sending State to exercise command or jurisdiction over members of the Visiting Force or its Civilian Component;
- (m) "Service Law" means any act, statute, order, regulation or instruction of the Sending State governing all or any of the members of the Visiting Force. Where the laws of the Sending State so provide, Service Law shall also apply to members of the Civilian Component;
- (n) "Visiting Force" means any body, contingent, or unit of the Forces of the Sending State when present in the Receiving State, in connection with combined training, exercises or other activities mutually approved by the Parties. The expression "of the Visiting Force" used in relation to "vessels" or "aircraft" includes vessels and aircraft on hire or on charter for the exclusive service of the Visiting Force.

ARTICLE 2 RESPECT FOR LAW

It is the duty of the Visiting Force and its Civilian Component to respect the law of the Receiving State, including quarantine laws and industrial awards and determinations, and to abstain from any activity inconsistent with this Agreement, and in particular, from any political activity in the Receiving State.

ARTICLE 3 SIZE OF VISITING FORCE

The Parties may mutually determine the size of the Visiting Force and its Civilian Component. For this purpose, the Sending State shall notify the Receiving State thirty (30) days prior to entry, or as otherwise mutually determined, of the size or number of the Visiting Force and its Civilian Component, including, as far as practicable, the names of the members of the Visiting Force and its Civilian Component.

ARTICLE 4 ENTRY AND DEPARTURE

(1) The Government of the Receiving State shall facilitate the admission and departure of the members of the Visiting Force and its Civilian Component. For combined training, exercises or other activities mutually

approved by the Parties, the Sending State shall notify the Receiving State of the arrival of the Visiting Force and its Civilian Component at least fifteen (15) days in advance of its estimated time of arrival. In emergency situations, as determined by the Authorities of the Receiving State, which may include search and rescue and disaster relief operations, the Sending State shall notify the Receiving State of the arrival of the Visiting Force and its Civilian Component at least forty eight (48) hours in advance of its estimated time of arrival, or as otherwise mutually determined by the Parties. In both cases, the Sending State shall notify the Receiving State of the departure of the Visiting Force and its Civilian Component at least twenty four (24) hours in advance of its estimated time of departure.

(2) Subject to the conditions specified in Paragraphs (3) and (4) of this Article, and subject to compliance with the formalities established by the Receiving State relating to the entry and departure, members of the Visiting Force and its Civilian Component, shall be exempt from any requirement to apply for a visa for entry into or departure from the Receiving State. The Visiting Force and its Civilian Component shall also be exempt from the regulations of the Receiving State on the registration and control of non-citizens, but shall not be considered as acquiring any right to permanent residence or domicile in the territory of the Receiving State.

(3) Only the following documents, which shall be presented on demand, shall be required in respect of members of the Visiting Force on Official Duty who enter or depart the Receiving State:

- (a) a personal identity card issued by the Sending State showing the full name, date of birth, rank or grade and service number (if any), service or branch of service and photograph; and
- (b) an individual or collective document issued by the Authorities of the Sending State authorizing the travel or visit to the Receiving State and identifying the individual or group as members of the Visiting Force.

(4) Members of the Civilian Component shall be required to be in possession of a passport that shall remain valid for at least six (6) months beyond the contemplated period of stay and a certificate issued by the Authorities of the Sending State certifying that the holder is a member of the Civilian Component.

(5) Members of the Visiting Force or its Civilian Component arriving in the Receiving State under this Agreement, but who are not properly documented under Paragraphs (2), (3) and (4) of this Article, shall be denied entry.

(6) If any person, other than a national of, or a person otherwise entitled to remain in, the Receiving State ceases to be a member of the Visiting Force or its Civilian Component, the Authorities of the Sending State shall:

- (a) promptly inform the Authorities of the Receiving State, giving such reasonable particulars as they may require;
- (b) promptly take reasonable steps to effect the departure of that person from the territory of the Receiving State if so required by the Authorities of the Receiving State; and
- (c) meet any reasonable costs incurred by the Authorities of the Receiving State in removing that person from the territory of the Receiving State.

(7) If the removal from the Receiving State of a member of the Visiting Force or its Civilian Component is requested by the Authorities of the Receiving State or required by the law of the Receiving State, the Authorities of the Sending State shall:

- (a) promptly take reasonable steps to effect the departure of that person from the territory of the Receiving State; and
- (b) meet any reasonable costs incurred by the Authorities of the Receiving State in removing that person from the territory of the Receiving State.

(8) The Authorities of the Sending State shall inform the Authorities of the Receiving State, giving such particulars as may be required, of any members of the Visiting Force who, after having been admitted to the Receiving State, absent themselves without approved leave for a period in excess of forty-eight (48) hours.

(9) The officer in charge of a military aircraft, Motor Vehicle or vessel shall present a Maritime Declaration of Health or General Declaration of Health for Aircraft or similar Declarations as specified by the Receiving State to the Authorities of the Receiving State and, when required by the Authorities of the Receiving State, shall conduct a quarantine inspection and will certify that the military aircraft, Motor Vehicle or vessel is free from quarantine diseases. Any quarantine inspection of Sending State aircraft, Motor Vehicle or vessel and members of the Visiting Force or its Civilian Component by the officer in charge shall be in accordance with International Health Regulations as promulgated by the World Health Organization, and mutually determined procedures.

(10) Notwithstanding the presentation of required pre-departure documents, a hold departure order issued by the Authorities of the Receiving State in connection with a civil, criminal or administrative inquiry shall prevent a member of the Visiting Force or its Civilian Component from leaving the jurisdiction of the Receiving State. For this purpose, all local law enforcement agencies of the Receiving State shall at all times inform, advise and/or effectively coordinate with their immigration authorities of the Receiving State in relation to the outcome of the civil, criminal or administrative inquiry.

(11) The Receiving State shall be regularly provided with official lists of the names of the arriving and departing members of the Visiting Force and its Civilian Component.

(12) All members of the Visiting Force and its Civilian Component shall be exempt from registration requirements of the Receiving State and all members of the Visiting Force shall be exempt from any applicable emigration clearance certificate requirement of the Receiving State. The Commissioner or Minister of Immigration of the Receiving State may require the members of the Civilian Component to secure any such emigration clearance certificates prior to departure, unless a request for waiver is promptly filed by an authorized representative of the Sending State and there is no hold departure order issued by the Authorities of the Receiving State in connection with a civil, criminal or administrative inquiry.

ARTICLE 5 COMBINED TRAINING, EXERCISES AND OTHER ACTIVITIES

(1) The Visiting Force may temporarily use such defined land and sea areas, air space or facilities of the Receiving State mutually determined by the Parties, for combined training, exercises or other activities mutually approved by the Parties, subject to the provisions of Article 12, and in accordance with the respective clearance procedures of the Parties. Such defined land and sea areas, air space or facilities shall at all times remain under the control of the Receiving State.

(2) The Authorities of the Sending State shall give the Authorities of the Receiving State prior written notice of its intention to temporarily use such defined land and sea areas, air space or facilities of the Receiving State for combined training, exercises or other activities mutually approved by the Parties. In the interest of security and safety, the Authorities of the Receiving State shall take such measures as may be mutually approved by the Parties to restrict unofficial civilian movement and activity in such land and sea areas, air space or facilities of the Receiving State during their temporary use by the Visiting Force.

(3) This Agreement is not and shall not be construed as a military basing agreement.

ARTICLE 6
TEMPORARY USE OF AREAS, FACILITIES AND PUBLIC SERVICES

(1) The Parties will mutually determine arrangements, including financial arrangements, for the temporary use of areas and facilities by the Visiting Force and its Civilian Component in the Receiving State, in connection with combined training, exercises, or other activities mutually approved by the Parties. Such areas and facilities shall at all times remain under the control of the Receiving State.

(2) The Visiting Force and its Civilian Component may, in furtherance of combined training, exercises and other activities mutually approved by the Parties, with the prior knowledge and consent of the Authorities of the Receiving State and in compliance with applicable laws, rules and regulations of the Receiving State, temporarily use public services and facilities owned, controlled or regulated by the Government of the Receiving State or its instrumentalities, subject to arrangements, including financial arrangements, to be mutually determined by the Parties. The terms of use, including charges, shall be no less favorable than those available to other users in the Receiving State in like circumstances, unless otherwise mutually determined between the Parties or provided for by the laws, rules and regulations of the Receiving State.

ARTICLE 7
**MOVEMENT OF FORCES, VESSELS,
AIRCRAFT AND MOTOR VEHICLES**

(1) Aircraft and vessels operated by or for the Visiting Forces and its Civilian Component may enter the Receiving State upon approval by the Authorities of the Receiving State in connection with combined training, exercises or other activities mutually approved by the Parties.

(2) The Authorities of the Receiving State shall grant to the Visiting Force and its Civilian Component, their aircraft, vessels and Official Motor Vehicles, ingress to and egress from such defined land and sea areas, air space or facilities in the Receiving State for the purpose of combined training, exercises or other activities mutually approved by the Parties.

(3) The Authorities of the Receiving State retain the right to prescribe the routes to be used and may impose restrictions on movements within the

Receiving State and prohibit access to and passage through specified areas, air space or facilities.

(4) Vessels belonging to the Visiting Force or its Civilian Component may, with the consent of the Authorities of the Receiving State, visit ports of the Receiving State for the purpose of combined training, exercises or other activities mutually approved by the Parties upon reasonable notification and in accordance with normal international practice.

(5) The Authorities of the Receiving State shall, subject to Article 2, allow individual members of the Visiting Force and the Civilian Component freedom of movement in the territory of the Receiving State for the purpose of lawful activities.

(6) The Authorities of the Sending State may, with the prior knowledge and consent of the Authorities of the Receiving State and in compliance with the port regulations or other applicable laws of the Receiving State, transport explosives (including ammunition) within the territory of the Receiving State, including its ports, for the purpose of combined training, exercises or other activities mutually approved by the Parties.

(a) Notwithstanding Paragraph (1) of Article 21, the Government of the Sending State shall indemnify the port authorities and the Receiving State against any legally enforceable claim and for which the Sending State is responsible arising out of the exercise of any of the rights aforesaid in respect of the transportation or storage of explosives undertaken by or for the Sending State. Where the responsibility for any legally enforceable claim rests partly or wholly with the port authorities or the Government of the Receiving State, and taking into account all circumstances of the case, the indemnity to be borne by the Government of the Sending State shall be in such a sum as may be mutually determined between the Parties. This is without prejudice to payment by the Sending State to a third party for damage to or loss of property and/or injury or death caused by the transportation or storage of such explosives in accordance with Paragraph (5) of Article 21.

(b) Notwithstanding Paragraph (1) of Article 21, the Government of the Sending State shall pay compensation to the port authorities and to the Government of the Receiving State for any damage to the property of the port authorities or the Government of the Receiving State, as the case may be, resulting from any explosion of such explosives. Such compensation shall be a sum as may be mutually determined between the Government of the Sending State, the port authorities and the Government of the

Receiving State, as the case may be, taking into account all the circumstances of the case. This is without prejudice to payment by the Sending State to a third party for damage to or loss of property and/or injury or death caused by any explosion of such explosives in accordance with Paragraph (5) of Article 21.

- (c) For purposes of this Article, the expression "Government of the Receiving State" includes any State Government or local authority or any statutory authority other than port authorities exercising powers vested in it by federal or state law.
- (d) The movement of the Visiting Force or its Civilian Component, their aircraft, vessels and Official Motor Vehicles, in and over the territory, territorial waters and air space of the Receiving State shall be under the conditions generally the same as those applicable to the Forces of the Receiving State in respect of pilotage, harbor charges and all dues or tolls.

ARTICLE 7A MORTUARY AFFAIRS

- (1) Subject to the Receiving State's laws, policies and procedures, the Authorities of the Sending State shall have the right to take and retain immediate charge of all matters relating to Mortuary Affairs upon the death of a member of the Visiting Force or its Civilian Component.
- (2) If a member of the Visiting Force or its Civilian Component is believed to be dead but his or her remains have not been recovered, the Authorities of the Receiving State shall permit the Sending State to be involved in the search for and recovery of those remains, subject to the Receiving State's laws, policies and procedures.
- (3) The Authorities of the Receiving State shall permit at least two members of the Visiting Force or its Civilian Component to stay with the remains it believes to be of any deceased member of the Visiting Force or its Civilian Component at all times.
- (4) The Authorities of the Sending State shall have the responsibility to Repatriate the remains of any deceased member of the Visiting Force or its Civilian Component.
- (5) If the remains of a deceased member of the Visiting Force or its Civilian Component are to be disposed of in the Receiving State instead of Repatriated, the Authorities of the Receiving State shall have regard to any requests made

by the Authorities of the Sending State in relation to the method of such disposal.

(6) The Authorities of the Sending State may certify in writing that a person was at the time of his or her death a member of the Visiting Force or its Civilian Component and that certificate shall be deemed to refer to the deceased member unless the contrary is proved.

(7) Nothing in this Article shall prevent a coroner of the Receiving State from:

- (a) taking evidence regarding the identity and cause of death of the deceased member of the Visiting Force or its Civilian Component and of the place and date of his or her death;
- (b) furnishing information to the Authorities of the Receiving State for the purpose of registration of the death; or
- (c) authorizing the burial, cremation or other disposal of the remains of the deceased member of the Visiting Force or its Civilian Component, having regard to any requests made by the Authorities of the Sending State in relation to the method of such disposal.

(8) For the purposes of this Article:

- (a) "Mortuary Affairs" means the identification, processing, repatriation and disposal of the remains of a deceased member of a Visiting Force or its Civilian Component and associated personal effects; and
- (b) "Repatriate" means to move remains and personal effects from the Receiving State to a designated point within the territory of the Sending State.

ARTICLE 8 UNIFORMS

Members of the Visiting Force may wear their respective national uniform when on Official Duty in the Receiving State. The wearing of civilian dress shall be permitted under the same conditions as for members of the Forces of the Receiving State, unless otherwise mutually determined between the Parties.

**ARTICLE 9
CARRIAGE OF ARMS**

Members of the Visiting Force may possess and carry arms when authorized to do so by their orders and with the permission of the Authorities of the Receiving State. Arrangements regarding the carrying of arms outside areas and facilities temporarily used by the Visiting Force and its Civilian Component in connection with combined training, exercises or other activities mutually approved by the Parties shall be mutually determined between the Parties.

**ARTICLE 10
SECURITY**

The Visiting Force shall have the right to maintain service police for the maintenance of discipline within the Force and may take reasonable measures, in a manner consistent with the laws of the Receiving State, to protect the security of the Visiting Force and its Civilian Component.

**ARTICLE 11
CRIMINAL JURISDICTION**

- (1) Subject to the provisions of this Article:
 - (a) The Authorities of the Receiving State shall have jurisdiction over the members of the Visiting Force and its Civilian Component with respect to offences committed within the territory of the Receiving State and punishable by the law of the Receiving State; and
 - (b) The Authorities or Service Authorities of the Sending State shall have the right to exercise within the Receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the Sending State over all persons subject to the Service Law of the Sending State.

- (2) Subject to the provisions of this Article:
 - (a) The Authorities of the Receiving State shall have the right to exercise exclusive jurisdiction over members of the Visiting Force and its Civilian Component with respect to offences punishable by the law of the Receiving State but not by the law of the Sending State; and

- (b) The Authorities or Service Authorities of the Sending State shall have the right to exercise exclusive jurisdiction over persons subject to the Service Law of the Sending State, with respect to offences punishable by the laws of the Sending State but not by the laws of the Receiving State.
- (3) In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:
- (a) The Authorities or Service Authorities of the Sending State shall have the primary right to exercise jurisdiction over members of the Visiting Force and its Civilian Component who are subject to the Service Law of the Sending State in relation to:
 - (i) Offences solely against the property or security of the Sending State, or offences solely against the person or property of another member of the Visiting Force or its Civilian Component; or
 - (ii) Offences arising out of an act or omission done in the performance of Official Duty. The Parties shall consult in determining whether an act or omission occurred in the performance of Official Duty, as defined in Article 1(i). After having exhausted all available avenues for negotiated resolution, the issue of whether an act or omission occurred in the performance of Official Duty may be submitted to the judicial authorities of the Receiving State.
 - (b) For purposes of this Article, an offence relating to security shall include:
 - (i) Treason; and
 - (ii) Sabotage, espionage or violation of any law relating to official secrets of the Parties or secrets relating to the national security of the Parties.
 - (c) In the case of any other offence, the Authorities of the Receiving State shall have the primary right to exercise jurisdiction.
 - (d) If the Authorities of a Party with the primary right to exercise jurisdiction elect not to do so, the Authorities of the Party shall notify the other Party as soon as it is practicable.

- (e) The Authorities of either Party may request the Authorities of the other Party to waive its primary right to exercise jurisdiction in a particular case that the requesting Party considers to be of particular importance.
 - (f) The Authorities of either Party with the primary right to exercise jurisdiction shall give sympathetic consideration to a request for waiver from the other Party. Such a decision may be given on conditions, which may include that proceedings be commenced by the Authorities of the requesting Party.
 - (g) The Authorities of the Parties shall notify each other of the disposition of all cases where the right to exercise jurisdiction is concurrent.
- (4) This Article shall not confer any right on the Service Authorities of the Sending State to exercise jurisdiction over persons who are ordinarily resident in the Receiving State, unless such persons are members of the Visiting Force.
- (5) Within the scope of their legal competence, the Authorities or Service Authorities of the Parties shall cooperate in the arrest of members of the Visiting Force or its Civilian Component in the territory of the Receiving State accused of or prosecuted for an offence and in handing them over to the Authorities of the Party that is to exercise jurisdiction in accordance with the above provisions.
- (6) The Authorities or Service Authorities of the Sending State shall give prompt notification to the Authorities of the Receiving State of the arrest or detention of any member of the Visiting Force or its Civilian Component and who is subject to the primary or exclusive jurisdiction of the Receiving State. The Authorities of the Receiving State shall promptly notify the Authorities or Service Authorities of the Sending State of the filing of any complaint against, or the arrest or detention of any member of the Visiting Force or its Civilian Component.
- (7) The custody, detention and confinement of any member of the Visiting Force or its Civilian Component over whom the Authorities of the Receiving State is to exercise, is exercising or had exercised jurisdiction shall be carried out in accordance with the following provisions:
- (a) Pending investigation and prior to the filing of charges before a court or judicial tribunal, the custody of any member of the Visiting Force or its Civilian Component over whom the Authorities of the Receiving State is to exercise jurisdiction shall, if he or she is in the hands of the Authorities of the Receiving State, remain with the Authorities of the Receiving State. The

custody over said member of the Visiting Force or its Civilian Component shall be maintained in the detention facilities of the Receiving State.

- (b) Pending investigation and prior to the filing of charges before a court or judicial tribunal, the custody of any member of the Visiting Force or its Civilian Component over whom the Authorities of the Receiving State is to exercise jurisdiction shall, if he or she is in the hands of the Authorities of the Sending State, remain with the Authorities of the Sending State. The Authorities of the Sending State shall ensure that said member of the Visiting Force or its Civilian Component shall remain in the territory of the Receiving State.
- (c) Upon the filing of charges before a court or judicial tribunal and until the judgment rendered becomes final, the custody over any member of the Visiting Force or its Civilian Component over whom the Authorities of the Receiving State is exercising jurisdiction shall be maintained in the detention facilities of the Receiving State.
- (d) Upon conviction by final judgment, any member of the Visiting Force or its Civilian Component over whom the Authorities of the Receiving State has exercised jurisdiction shall be confined and serve his or her sentence in accordance with the laws of the Receiving State.
- (e) A member of the Visiting Force or its Civilian Component taken into custody, detained or otherwise confined in the Receiving State shall have the right to consular or familial visits and material assistance.

(8) Within the scope of their legal authority, the Parties shall cooperate in the investigation of offences, including the collection and production of evidence. The provision of evidence may be made subject to the condition of its return within any reasonable time specified by the authority delivering it.

(9) Where a member of the Visiting Force or its Civilian Component has been tried by the Authorities or Service Authorities of the Sending State or the Authorities of the Receiving State, and has been acquitted, convicted, pardoned or has had his or her sentence suspended, he or she may not be tried again for substantially the same offence within the Receiving State. However, nothing in this Article shall prevent the Service Authorities of the Sending State from trying a member of the Visiting Force or its Civilian Component subject to the Service law of the Sending State for any violation of

rules of discipline arising from an act or omission that constituted an offence for which he or she has been tried.

(10) Members of the Visiting Force or its Civilian Component taken into custody, detained or prosecuted by the Authorities of the State that is to exercise jurisdiction, shall be accorded all procedural safeguards established by the law of the said State. At the minimum, he or she shall be entitled to procedural safeguards common to both Parties, including the following:

- (a) To a prompt and speedy trial;
- (b) To be informed in advance of the trial of the specific charge or charges made against him or her and to have reasonable time to prepare a defence;
- (c) To be confronted with the witnesses against him or her and to cross examine such witnesses;
- (d) To present evidence in his or her defence and to have compulsory process for the calling of witnesses if they are within the jurisdiction of the Receiving State;
- (e) To have legal representation of his or her own choice for his or her defence or to have free or assisted legal representation in accordance with conditions prevailing in the Receiving State;
- (f) To have the services of a competent interpreter;
- (g) To communicate with a representative of his or her Government and, when the rules of the court permit, to have a representative of that Government present at his or her trial;
- (h) To be present at his or her trial, which shall be public. However, without prejudice to the minimum standards listed in this Article, any other person may be excluded, if the court so decides for reasons of public order, security or morality;
- (i) To seek a writ of habeas corpus;
- (j) To have the right to bail, subject to the pertinent laws of the Receiving State;
- (k) To have the right not to be compelled to testify against himself or herself; and

- (l) Not to be held guilty for a criminal offence on account of any act or omission which did not constitute a criminal offence under either the law of the Receiving State or international law at the time it was committed.
- (11) Members of the Visiting Force and its Civilian Component shall be subject to trial only in the courts of ordinary jurisdiction of the Receiving State and shall not be subject to the jurisdiction of the military or religious courts of the Receiving State.
- (12) A sentence of death shall not be carried out by either Party.
- (13) Unless otherwise mutually determined between the Parties, members of the Visiting Force or its Civilian Component shall not be subject to the Service Law of the Receiving State.

ARTICLE 12 ENVIRONMENTAL PROTECTION

- (1) The Parties recognize and acknowledge the importance of environmental protection in the context of combined training, exercises or other activities mutually approved by the Parties.
- (2) The Parties commit themselves to prevent the dumping of wastes and other matter that create hazards to human health, harm living resources and marine life, damage amenities or interfere with the legitimate uses of natural resources within the territorial jurisdiction of the Receiving State. Combined training, exercises or other activities mutually approved by the Parties shall be conducted in accordance with existing environmental laws, rules, regulations and policies of the Receiving State and consistent with international conventions and agreements to which the Receiving State is a signatory, regardless of whether the Sending State is a signatory to such international convention or agreement invoked. When combined training, exercises or other activities mutually approved by the Parties are being planned, the Receiving State shall inform the Authorities of the Sending State in writing of all relevant environmental laws, rules, regulations, policies and international conventions and agreements. The Sending State shall not be responsible for any environmental damage that occurs as a result of not being fully informed by the Receiving State of all such relevant environmental laws, rules, regulations, policies and international conventions and agreements.
- (3) The Parties shall work together to exchange appropriate information regarding issues that could affect the health and environment of citizens of the Receiving State and the Visiting Force and its Civilian Component. The Authorities of the Parties shall discuss, on a regular basis, environmental issues related to combined training, exercises or other activities mutually

approved by the Parties. The Parties shall consult on any risks posed by environmental contamination of facilities and areas of the Receiving State and in the communities adjacent to such facilities and areas.

(4) Notwithstanding Paragraph (1) of Article 5, combined training, exercises or other activities mutually approved by the Parties shall not be undertaken in protected areas, ancestral domain areas, critical watersheds and protected forest areas, which are to be used consistent with the policies of enhancement of biological diversity and sustainable development and protection against destructive human activities as provided for in pertinent environmental laws, rules, regulations and policies of the Receiving State.

(5) The importation, manufacture, processing, handling, storage, transportation, sale, distribution, use and disposal within the territorial limits of the Receiving State of chemical substances and mixtures that present unreasonable risk or injury to health or the environment as well as the entry, transit, generation or use of hazardous and nuclear wastes and their disposal into the territorial limits of the Receiving State, for whatever purpose, are strictly prohibited.

(6) The Authorities of the Sending State shall provide the Authorities of the Receiving State information with respect to whether the Visiting Force and its Civilian Component have with them or in their equipment or aircraft, motor vehicle or vessel the prohibited substances referred to above.

(7) The Government of the Sending State commits to conduct, in coordination with the Authorities of the Receiving State, periodic environmental performance assessments that examine, identify and evaluate the environmental aspects of such combined training, exercises or other activities mutually approved by the Parties in order to minimize adverse environmental effects, including planning, programming and budgeting for these requirements accordingly. The Government of the Sending State shall promptly undertake to remedy contamination caused by the Visiting Force and its Civilian Component that poses a known, imminent and substantial endangerment to human health and to consider additional remedial measures required to protect human health.

(8) Any environmental damage to individuals and/or properties resulting from combined training, exercises or other activities mutually approved by the Parties will be subject to claims and compensation notwithstanding Paragraph (1) of Article 21. Where it has been mutually determined that the Sending State has caused environmental damage to an area, the Government of the Sending State shall be responsible for the rehabilitation of damaged areas in accordance with the existing environmental laws, rules, regulations and policies of the Receiving State.

- (9) For purposes of this Article:
- (a) “Chemical substance” means any organic or inorganic substance of a particular molecular identity, including:
 - (i) any combination of such substances occurring in whole or in part as a result of chemical reaction or occurring in nature; and
 - (ii) any element or uncombined chemical;
 - (b) “Chemical mixture” means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction, if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined. This shall include non-biodegradable mixtures;
 - (c) “Process” means the preparation of a chemical substance or mixture after its manufacture for commercial distribution:
 - (i) in the same form or physical state or in a different form or physical state from that which it was received by the person so preparing such substance or mixture; or
 - (ii) as part of an article containing a chemical substance or mixture;
 - (d) “Importation” means the entry of products or substances into the Receiving State after having been properly cleared through or still remaining under customs control, the product or substance of which is intended for direct consumption, merchandising, warehousing, or for further processing;
 - (e) “Manufacture” means the mechanical or chemical transformation of substances into new products whether work is performed by power-driven machines or by hand, whether it is done in a factory or in a worker’s home, and whether the products are sold at wholesale or retail;
 - (f) “Unreasonable risk” means expected high frequency of undesirable effects or adverse responses arising from a given exposure to a substance;

- (g) "Hazardous substances" are substances which present either:
 - (i) short-term acute hazards, such as acute toxicity by ingestion, inhalation or skin absorption, corrosivity or other skin or eye contact hazards or the risk of fire or explosion; or
 - (ii) long-term environmental hazards, including chronic toxicity upon repeated exposure, carcinogenicity (which may in some cases result from acute exposure but with a long latent period), resistance to detoxification process such a biodegradation, the potential to pollute underground or surface waters, or aesthetically objectionable properties such as offensive odors;
- (h) "Hazardous wastes" are hereby defined as substances that are without any safe commercial, industrial, agricultural or economic usage and are shipped, transported or brought from the country of origin for dumping or disposal into or in transit through any part of the territory of the Receiving State. Hazardous wastes shall also refer to by-products, side-products, process residues, spent reaction media, contaminated plant or equipment or other substances from manufacturing operations, and as consumer discards of manufacture products; and
- (i) "Nuclear wastes" are hazardous wastes made radioactive by exposure to the radiation incidental to the production or utilization of nuclear fuels but does not include nuclear fuel, or radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial, or industrial purpose.

ARTICLE 13 IMPORTATION AND EXPORTATION

(1) Except as expressly provided to the contrary in this Article, members of the Visiting Force and its Civilian Component shall be subject to the laws and regulations administered by the customs, taxation and other Authorities of the Receiving State.

(2) Official documents under official seal shall not be subject to customs inspection. Such documents shall be accompanied by a certificate issued by the Authorities of the Sending State confirming that only official documents

are enclosed. Samples of official seals shall be lodged with the customs Authorities of both Parties.

(3) The Visiting Force may, in accordance with the law of the Receiving State, import free of duties and taxes equipment, materials, Motor Vehicles, provisions and supplies (including bullets, ammunitions and other explosive devices) intended for the exclusive official use or consumption of the Visiting Force or its Civilian Component for combined training exercises or other activities mutually approved by the Parties.

(4) Items which have been imported free from duties and taxes under Paragraph (3) of this Article:

- (a) may be exported freely, although the customs authorities of the Receiving State may require verification that the items to be exported have been imported under the conditions of this Article and may require security or undertakings for compliance with the conditions of Paragraph (3);
- (b) shall not be operated, sold, leased, rented, traded, transferred to another person, or otherwise disposed of in the Receiving State except in accordance with the laws and regulations in force in the Receiving State or this Agreement and under relevant conditions, including payment of the corresponding duty and tax, as well as compliance with the requirements of the controls of trade and exchange as may be imposed by the Authorities in the Receiving State; and
- (c) except as may be otherwise mutually agreed, title to such items shall remain in the Sending State, which may remove such property from the Receiving State at any time.

(5) With express approval of the appropriate Authorities of the Receiving State, items which have been imported free of duty under Paragraph (3) of this Article may, if they are owned by the Visiting Force or its Civilian Component, be disposed of in the Receiving State by public sale, auction, tender or private treaty, provided that:

- (a) before doing so, the Service Authorities of the Sending State shall first offer them for sale at a reasonable price having regard to their condition and other relevant circumstances to the Government of the Receiving State unless the latter shall have indicated that it is not interested in their acquisition; and
- (b) in so disposing of stores or goods, the Service Authorities of the Sending State shall be liable to pay any duties and taxes which

would be payable on items so disposed of if they were imported by a private individual into the Receiving State at the date of such disposal.

(6) The Service Authorities of the Sending State shall be permitted to import and export, free of duties and taxes, all fuel, oil and lubricants intended for exclusive use in Official Motor Vehicles, aircraft and vessels of the Visiting Force or its Civilian Component used in connection with combined training, exercises or other activities mutually approved by the Parties.

(7) Regulation military uniforms may be imported by a member of the Visiting Force for personal use free of import duties.

(8) For purposes of this Article:

(a) "Duties and taxes" means all customs duties and internal revenue taxes, such as value added, ad valorem and percentage taxes, payable on importation or exportation, except fees that are no more than charges for services rendered; and

(b) "Importation" includes withdrawals from free ports, customs warehouses or continuous customs custody, provided that the goods concerned have not been grown, produced or manufactured in the Receiving State.

ARTICLE 14 SECURITY OF CLASSIFIED INFORMATION

(1) All Classified Information provided or generated under this Agreement shall be used, stored, handled, transmitted and safeguarded in accordance with each Party's national security laws, regulations, practices and procedures and the specific requirements of this Agreement.

(2) In the absence of a bilateral security instrument for the protection of Classified Information between the Parties, requests for the release of Classified Information to the other Party shall be approved in accordance with the Originating Party's national release procedures on a case by case basis. Any release of Classified Information shall be subject to the release conditions of the Originating Party.

(3) Classified Information shall be transferred only through government-to-government channels. Such Classified Information shall bear the level of classification, denote the country of origin and the conditions for release.

(4) Each Party shall take all appropriate lawful steps available to it to ensure that Classified Information received under this Agreement is protected from further disclosure unless the Originating Party consents in writing to such disclosure. Accordingly, each Party shall ensure that:

- (a) the Receiving Party shall not release Classified Information provided by the Originating Party or generated under this Agreement to a Third Party without the prior written consent of the Originating Party;
- (b) the Receiving Party shall not use Classified Information provided by the Originating Party or generated under this Agreement for purposes other than those provided for in this Agreement;
- (c) the Receiving Party shall require that all persons given access to Classified Information provided by the Originating Party or generated under this Agreement will comply with any distribution and access restrictions on Classified Information; and
- (d) the Receiving Party shall require that all persons accessing the Classified Information provided by the Originating Party or generated under this Agreement have a need-to-know and possess the appropriate national security clearance.

(5) Each Party shall maintain the national security classifications assigned to Classified Information by the Originating Party and shall afford such Classified Information the same level of security protection provided by the Originating Party.

(6) Each Party shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information received or generated under this Agreement has been lost or disclosed to unauthorized persons. Each Party shall also promptly and fully inform the other Party of the details of such occurrences, the final results of the investigation and the corrective action taken to preclude recurrences.

(7) For purposes of this Article:

- (a) "Originating Party" means the Party that provides the Classified Information and accords it a national security classification, and that transmits Classified Information to the other Party;
- (b) "Receiving Party" means the Party that receives Classified Information transferred from the Originating Party; and

- (c) “Third Party” means any person or entity other than the Parties, including any third country government, any national of a third country (except for members of the Civilian Component), any contractor (except for members of the Civilian Component who are contractors) and any commercial entity, whether or not the entity is owned, controlled or influenced by any of the Parties.

ARTICLE 15 COMMUNICATIONS

- (1) A Visiting Force or Civilian Component shall only use the frequencies allocated to them by the Receiving State. The procedure for the allocation, use, change, withdrawal or return of frequencies shall be mutually determined between the Authorities of both Parties.
- (2) The Service Authorities of the Sending State shall prevent items from being posted through postal services in contravention of the laws, rules and regulations of the Receiving State.
- (3) The Parties will mutually determine arrangements for the inspection by Authorities of the Receiving State of non-official mail that may be required by the regulations of the Receiving State.

ARTICLE 16 MOTOR VEHICLES

- (1) Official Motor Vehicles of the Visiting Force or its Civilian Component, excluding Motor Vehicles hired in the Receiving State, shall:
 - (a) display a distinctive nationality mark;
 - (b) display a registration number issued by the Government of the Sending State;
 - (c) be registered with the Authorities of the Receiving State under, and subject to, the applicable laws of the Receiving State; and
 - (d) not be exempted from the payment of toll fees or any tax ordinarily applied in respect of the use of such Motor Vehicles on the roads of the Receiving State.

(2) Privately-owned Motor Vehicles of members of the Visiting Force or its Civilian Component shall be registered under, and subject to the applicable laws of the Receiving State.

ARTICLE 17 DRIVING LICENSES AND LAWS

(1) The Government of the Receiving State shall accept as valid, without a driving test or fee, the driving permit or license issued by the Government of the Sending State to a member of the Visiting Force for the purpose of driving Official Motor Vehicles in the course of his or her Official Duty.

(2) Subject to Paragraph (1), members of the Visiting Force and its Civilian Component shall be subject to applicable laws of the Receiving State in respect of the driving of Motor Vehicles.

ARTICLE 18 LOCAL PURCHASES

Subject to any requirement of the Government of the Receiving State, the Government of the Sending State and its contractors shall purchase local goods and commodities which they require for the purpose of this Agreement if they are available at a suitable price and are of standard required.

ARTICLE 19 EMPLOYMENT OF LOCAL CIVILIANS

Subject to any requirement of the Government of the Receiving State, the Government of the Sending State and its contractors shall employ such local labor as they may require, provided the labor is available and qualified to the work required. The conditions of employment and work, particularly wages, supplementary payments and conditions for the protection of workers, shall comply with the minimum standards laid down by the law, including wage orders, industrial awards and determinations, of the Receiving State. Local civilian workers employed by the Visiting Force or its Civilian Component shall not be regarded for any purpose as being members thereof.

ARTICLE 20
PERSONAL TAXATION

Other than for taxes and duties for which provision is made under this Agreement, the liability for taxes and duties of a member of the Visiting Force or its Civilian Component shall be governed by any agreement between the Parties in relation to such taxes or duties, including existing agreements between the Parties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, that has been implemented under the law of both Parties.

ARTICLE 21
CLAIMS

(1) Subject to the express exceptions in Article 12 and Paragraph (6) (a) and (b) of Article 7, each Party shall waive all its claims against the other Party:

- (a) For loss of or damage to (including loss of the use of) any property owned by a Party and used by the Forces of either Party, where such property is being used in connection with combined training, exercises or other activities mutually approved by the Parties, if such damage:
 - (i) was caused by an act or omission of either Party and arose out of or in the course of the performance of Official Duty; or
 - (ii) arose from the use of any Official Motor Vehicle, vessel or aircraft in the performance of Official Duties;
- (b) For maritime salvage, provided that the vessel or cargo salvaged was owned by either Party and was being used by either Party in connection with combined training, exercises or other activities mutually approved by the Parties; and
- (c) For damages for injury or death suffered by a member of the Forces of either Party or its Civilian Component, while such member was engaged in the performance of his or her Official Duties in connection with combined training, exercises or other activities mutually approved by the Parties.

(2) The following claims shall be settled in accordance with Paragraph (3) of this Article:

- (a) A claim for loss of or damage to (including loss of the use of) any property owned by a Party, but not used by the Forces of either Party, if such damage:
 - (i) was caused by an act or omission of either Party and arose out of or in the course of the performance of Official Duty; or
 - (ii) arose from the use of any Official Motor Vehicle, vessel or aircraft in the performance of Official Duties;
 - (b) For maritime salvage, provided that the vessel or cargo salvaged was owned by either Party but was not being used by either Party in connection with combined training, exercises or other activities mutually approved by the Parties.
- (3) A claim under Paragraph (2) shall be settled in accordance with the following provisions:
- (a) Where it is mutually determined that one Party is solely liable for the loss or damage, that Party shall meet the costs of the claim in full;
 - (b) Where it is mutually determined that the Parties are jointly liable for the loss or damage and it is possible to apportion liability between the Parties, each Party shall meet the portion of the costs of the claim corresponding to the degree of the Party's liability; and
 - (c) Where it is not possible to apportion liability between the Parties, the costs of the claim shall be borne equally by the Parties.
- (4) For purposes of Paragraphs (1) and (2) of this Article, the expression "owned by a Party" includes:
- (a) In the case of a vessel, a vessel on bare boat charter to that Party or requisitioned by it on bare boat terms or seized by it in prize;
 - (b) In the case of Official Motor Vehicles or airplanes, Official Motor Vehicles or airplanes on hire or charter to a Party, except to the extent that the risk of loss or liability is borne by a third party; and

- (c) In the case of any other property hired by a Party except to the extent that the risk of loss or damage is borne by a third party.

(5) Claims arising out of acts or omissions of a member of the Visiting Force or the Civilian Component done in the performance of Official Duty, or out of any other act, omission or occurrence in the Receiving State and causing damage to the property of third parties, or injury or death to third parties, shall be dealt with in accordance with the following provisions:

- (a) Claims shall be filed, considered and settled or adjudicated in accordance with the laws of the Receiving State with respect to claims arising from the activities of the Visiting Force or its Civilian Component in the Receiving State;
- (b) The Authorities of the Receiving State shall notify the Service Authorities of the Sending State of the particulars of the claim and shall keep the Service Authorities of the Sending State informed of its dealings with the claim;
- (c) The Authorities of the Receiving State shall take into consideration the reasonable instructions of the Service Authorities of the Sending State as to the defence or settlement of the claim;
- (d) The Authorities of the Receiving State shall not settle the claim without the prior consent of the Authorities of the Sending State, which shall not be unreasonably withheld;
- (e) The cost incurred in satisfying claims pursuant to the preceding Sub-Paragraphs shall be distributed as follows:
 - (i) where the Government of the Sending State is found to be solely responsible for the damage, injury or death, either through settlement or adjudication in the courts of the Receiving State, the amount agreed upon in settlement or award determined by adjudication, as the case may be, shall be borne solely by the Government of the Sending State; or
 - (ii) where the Governments of the Sending State and the Receiving State are found to be jointly responsible for the damage, injury or death, either through settlement or adjudication in the courts of the Receiving State, the amount agreed upon in settlement or award determined by adjudication, as the case may be, shall be distributed

in accordance with the proportion of liability so determined;

- (f) The Service Authorities of the Sending State shall reimburse the Authorities of the Receiving State the costs incurred in satisfying the claim, including reasonable costs of the Authorities of the Receiving State in dealing with the claim, in the currency of the Receiving State, within the shortest possible time;
 - (g) Any payment, whether made pursuant to a settlement or adjudication of the case by a competent tribunal of the Receiving State, or final adjudication by such a tribunal denying payment, shall be a binding and conclusive discharge of the claim; and
 - (h) The Parties may mutually determine that third party claims shall be dealt with by the Authorities of the Sending State. In such cases Sub-Paragraphs (b), (c), (d) and (f) shall not apply.
- (6) (a) All tortious claims against the members of the Visiting Force or its Civilian Component arising from any act, omission or occurrence in the Receiving State that occurred or were committed or omitted in the Receiving State and are not within the purview of the preceding Paragraphs of this Article shall be subject to the laws and jurisdiction of the Receiving State,
- (b) All contractual claims against the members of the Visiting Force or its Civilian Component arising from any act, omission or occurrence in the Receiving State that occurred or were committed or omitted in the Receiving State and are not within the purview of the preceding Paragraphs of this Article shall be subject to the laws and jurisdiction of the Receiving State, in the absence of contractual stipulations to the contrary.
- (7) Where the Parties mutually determine in respect of any claim that damage, loss, injury or death was caused by reckless acts, willful misconduct or negligence of solely one Party, the costs of any liability for that claim will be entirely borne by that Party.
- (8) The Service Authorities of the Sending State shall, at the request of the Authorities of the Receiving State, afford all assistance within their power to the Authorities of the Receiving State, to take possession of any property of a member of the Visiting Force or its Civilian Component which is subject to levy under the law of the Receiving State and which is within an area or facility temporarily used by the Visiting Force or its Civilian Component.

(9) The Authorities of the Parties shall cooperate in the procurement of evidence for a fair hearing and disposal of claims under this Article.

(10) No claim of immunity from the jurisdiction of the courts of the Receiving State in favour of members of the Visiting Force or its Civilian Component shall be requested by the Government of the Sending State in respect of the civil jurisdiction of the courts of the Receiving State.

ARTICLE 22 EXCHANGE CONTROL

(1) Members of the Visiting Force or its Civilian Component shall remain subject to the foreign exchange regulations of the Sending State and shall also be subject to the foreign exchange regulations of the Receiving State in relation to acts done in its territory.

(2) Remittances between the Receiving State and the Sending State shall be permitted in respect of:

- (a) Funds derived by members of the Visiting Force or its Civilian Component from services or employment in connection with their Official Duties; and
- (b) Funds derived by the members of the Visiting Force or its Civilian Component from sources outside the Receiving State, subject to the regulations of the Parties.

(3) This Article shall not preclude the transmission of foreign exchange instruments representing the official funds of the Visiting Force into or out of the Receiving State.

(4) This Article shall not apply to persons ordinarily a resident in the Receiving State.

ARTICLE 23 ABUSE OF PRIVILEGES

The Service Authorities of the Sending State shall cooperate with the Government of the Receiving State to prevent any abuse or misuse of the privileges granted in favor of, and to ensure proper discharge of the obligations imposed on, members of the Visiting Force or its Civilian Component. In particular, the Service Authorities of the Sending State shall ensure that the rights and obligations existing under this Agreement are

brought to the notice of all members of the Visiting Force or its Civilian Component.

**ARTICLE 24
RESOLUTION OF DISPUTES**

Any dispute between the Parties on the interpretation or application of this Agreement shall not be referred to any third party or tribunal but shall be settled amicably by consultation and negotiation between the Parties.

**ARTICLE 25
MECHANISM FOR CONSULTATION**

A Joint Committee, composed of representatives from both Parties, shall be established to monitor the implementation of the provisions of this Agreement, and serve as a forum where consultations may be done in the first instance. The Joint Committee shall meet as required, upon request by either Party.

**ARTICLE 26
RIGHTS AND OBLIGATIONS UPON TERMINATION**

Upon termination or expiration of this Agreement, all provisions conferring rights or imposing obligations on the Parties concerning claims, indemnities, the protection of Classified Information or private rights shall remain in force as if this Agreement had not been terminated, provided that such claims, indemnities, the protection of Classified Information or private rights arose out of rights or obligations relating to any activities undertaken prior to the termination or expiration of this Agreement.

**ARTICLE 27
AMENDMENT**

This Agreement may be amended by mutual agreement of the Parties in writing. The amendments shall enter into force in accordance with Article 28.

**ARTICLE 28
ENTRY INTO FORCE AND DURATION**

This Agreement shall enter into force on the date of the later written notification by the Parties, through diplomatic channels, that they have completed their respective domestic and constitutional requirements for its

entry into force. This Agreement shall remain in force until the expiration of one hundred eighty (180) days from the date on which either Party gives the other Party notice in writing, through diplomatic channels, that it desires to terminate the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Canberra in duplicate this thirty first day of May two thousand and seven.

**FOR THE GOVERNMENT OF
AUSTRALIA**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF THE PHILIPPINES**

Hon. Brendan Nelson
Minister for Defence

Hon. Hermogenes E Ebdane Jr.
Secretary of National Defense