

**INTERNATIONAL CIVIL AVIATION ORGANIZATION
ASIA AND PACIFIC OFFICE**



**REPORT OF THE SPECIAL COORDINATION MEETING ON FUNDING OF
THE BAY OF BENGAL ADS/CPDLC OPERATIONAL TRIAL
(SCM BOB CRA)**

BANGKOK, THAILAND

2 & 3 JUNE 2005

The views expressed in this Report should be taken as those of the
Meeting and not the Organization

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SCM BOB CRA
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1.1 Introduction

1.1.1 The Special Coordination Meeting of the Central Reporting Agency for the Bay of Bengal ADS/CPDLC Operational Trial (SCM BOB CRA) was held at the Kotaite Wing of the ICAO Asia/Pacific Regional Office, Bangkok, Thailand between 2 and 3 June 2005.

1.2 Attendance

1.2.1 The meeting was attended by 9 participants from India, Indonesia, Malaysia, Thailand and IATA. A complete list of participants is at **Appendix A**.

1.2.2 The meeting noted an apology from the Director/Aeronautical Services, Sri Lanka, in respect of their inability to attend the meeting as a result of the significant domestic constraints that had been experienced by Sri Lanka during recent weeks. Sri Lanka advised that they supported the progress made so far by the region in regard to the funding arrangements of the CRA and wished to engage in an email dialogue during the course of the meeting. Sri Lanka undertook to have legal expertise available via email during the meeting, in order to provide swift feedback to the meeting proposals. The Secretariat undertook to provide Sri Lanka with regular updates during the course of the meeting.

1.3 Officers and Secretariat

1.3.1 Mr. Andrew Tiede, Regional Officer ATM, ICAO Asia and Pacific Office, Bangkok served as the Moderator and Secretary for the meeting. He was assisted by Dr. Paul Hooper, Regional Officer AT, ICAO Asia and Pacific Office.

1.4 Opening of the Meeting

1.4.1 Mr. Andrew Tiede, on behalf of Mr. Lalit B. Shah, Regional Director, ICAO Asia and Pacific Regional Office welcomed all participants to the meeting. In noting that the special coordination meeting had been convened to address a very specific task, that of the funding of the CRA for the Bay of Bengal, Mr. Tiede drew attention to the similarities between the funding requirements for the CRA and those required for airspace monitoring in general. In recent years, the inclusion by ICAO of safety management provisions in Annex 11 and the extensive implementation of reduced separation applications like RVSM had necessitated increased safety planning and monitoring activities by States. In many instances, the expertise required for safety monitoring activities was not readily available, requiring States to collaborate in the provision of safety services and to work towards establishing suitable mechanisms for the provision and funding of multinational infrastructure and services.

1.4.2 Mr. Tiede drew attention to the many difficulties being experienced in the provision of safety monitoring services throughout the Asia and Pacific Region, observing that the lack of funding was one of the main obstacles. He expected positive outcomes from the meeting, and that the outcomes of the meeting would be welcomed by both ICAO and States as a practical example of effective funding of a multinational service. Mr. Tiede wished the meeting every success.

1.5 Documentation and Working Language

1.5.1 The working language of the meeting and all documentation was in English.

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Agenda Item 1: Adoption of Provisional Agenda

1.1 The meeting reviewed the provisional agenda and adopted it as the agenda for the meeting.

Agenda Item 1:	Adoption of Agenda
Agenda Item 2:	Review of Bay of Bengal CRA issues
Agenda Item 3:	Funding arrangements for the Bay of Bengal CRA
Agenda Item 4:	Implementation arrangements for the Bay of Bengal CRA
Agenda Item 5:	Any Other Business

1.2 The meeting noted that the SCM BOB CRA would report to the BBACG, which had convened the SCM BOB CRA to consider the funding issues related to the CRA. In addition, the Secretariat advised that the progress of the SCM BOB CRA would be reported to the Third Meeting of the Regional Airspace Safety Monitoring Advisory Group (RASMAG/3) scheduled next week.

Agenda Item 2: Review of Bay of Bengal CRA issues

2.1 In reviewing the circumstances that had led to the convening of this special coordination meeting, the meeting recalled that the combined Thirteenth Meeting of the Bay of Bengal ATS Coordination Group (BBACG/13) and the Second Meeting of the FANS Action Team (now FANS Implementation Team) for the Bay of Bengal Area (FAT-BOB/2), held in September 2003, had recognized that in order to meet ICAO safety management provisions a Central Reporting Agency (CRA) was required to provide the airspace safety monitoring for ADS and CPDLC systems. The combined meeting had also recognized that CRA would need to be funded and noted that until suitable funding arrangements were established, implementation of ADS and CPDLC operational ATC services could not be carried out for the international airspace over the Bay of Bengal area.

ICAO Safety Provisions

2.2 The meeting recalled that Annex 11, Chapter 2, Section 2.26, requires States, amongst other things, to implement systematic and appropriate ATS safety management programmes to ensure that safety is maintained in the provision of ATS within airspaces. Further, paragraph 2.26.5 requires that any significant safety-related change to the ATC system, including implementation of a reduced separation minimum or a new procedure, shall only be effected after a safety assessment has demonstrated that an acceptable level of safety will be met and users have been consulted.

2.3 BBACG/13 recognized that the establishment of a CRA was critical to enabling States to meet the Annex 11 safety monitoring provisions required to implement operational ADS and CPDLC systems. The CRA performs the essential technical analysis of the performance of these systems and undertakes the investigation of system failures and other technical malfunctions. This was essential to trace the cause of problems whether in the aircraft or ground systems, and to initiate remedial action by the responsible parties. In this regard, the tasks performed by a CRA were highly specialized and required test equipment and simulation capability that was not readily available. Also, it was important that expertise was continuously available to support the ADS/CPDLC programme.

2.4 As a CRA was part of the safety requirements for the implementation and ongoing operation of ADS and CPDLC services, BBACG/13 recognized that the responsibility for the setting up and operation of a CRA for the Bay of Bengal area should be borne by the States or ATS service providers providing the ADS and CPDLC services. In this regard, recovery of these costs could be met through user charges.

CRA Special Coordination Meeting December 2003

2.5 FAT-BOB/2 noted that a major obstacle to commencing the Bay of Bengal operational trial proposed for February 2004 was the provision of funding for establishing and operating the CRA. Accordingly, the Regional Office convened a special coordination meeting (SCM-CRA) from 8 to 10 December 2003, with a view to finding a way to provide the necessary funding to establish the CRA, and assure funding for the period of its operation.

2.6 The SCM-CRA considered various models available for States to cooperate with each other to provide shared, multinational infrastructure and services. The meeting noted that the traditional approach to funding air navigation services had been for each State to calculate, bill and collect itself such air navigation services charges as it might levy. However, the establishment and operation of a CRA for the Bay of Bengal FIRs was an example of a service requiring cooperation among several States. Accordingly, the meeting set about developing a tailor-made arrangement to be implemented on at least a trial basis. The meeting agreed that the trial should be for one year, after which the FIT-BOB should review the arrangement.

2.7 IATA informed the SCM-CRA that, in the interest of overcoming the delays in ADS/CPDLC implementation, it was prepared to consider collecting a levy directly from the airlines to fund the CRA services. The meeting expressed its appreciation to IATA and agreed that this would be the simplest and most efficient way to obtain funding for the CRA, and would not involve any cost or participation by States in the collection process.

2.8 The SCM-CRA agreed that the model that best met the needs of obtaining funds for the CRA was based on the Joint Financing arrangements. In this regard, the meeting developed a modified version of the traditional model which provided for IATA to collect a levy on the airspace users and to include provision for contributions to be made from other sources. Details of this arrangement are contained in **Appendix B**.

BBACG/14 and FIT-BOB/3 Meeting

2.9 The combined BBACG/14 and FIT-BOB/3 meeting (February 2004) studied the results of the SCM-CRA and reviewed and endorsed the recommendations that had been proposed by the SCM-CRA.

2.10 FIT-BOB/3 also accepted an offer by the Boeing Company to provide CRA services for the Bay of Bengal operational trial, noting that Boeing would not be able to commence the CRA operation until a contract was in place, and agreed that the operational trial could commence as planned on AIRAC date 19 February 2004. Accordingly, IATA and Boeing were requested to pursue the establishment of a contract on behalf of the FIT-BOB States participating in the operational trial for Boeing to set up and operate the CRA. IATA agreed to the arrangements and would work with Boeing to evaluate the costs of operating the CRA, arrange for a contract with Boeing, and collect the funds from the airspace users concerned.

BBACG/15 and FIT-BOB/4 Meeting

2.11 The combined BBACG/15 and FIT-BOB/4 meeting (September 2004) was updated in respect of the progress of the CRA arrangements. IATA informed the meeting that it had completed the required airline arrangements to provide funding with a first year cap of not more than US\$500 thousand and was in the process of completing the legal documentation with Boeing. IATA requested the assistance of States in providing traffic data to assist with the collection of payments from participating airlines.

2.12 Boeing CRA confirmed that satisfactory arrangements had been made and that the finalization of the legal aspects was imminent. Boeing indicated that for all intents and purposes, the FIT-BOB should consider that the CRA would be able to commence work related to the Bay of Bengal operational trial from October 2004.

Combined FIT-BOB/5, FIT-SEA/2, ATFM/TF/1 and ADS/CPDLC Seminar

2.13 FIT-BOB again reviewed the status of the CRA during the Combined Meetings of the FIT-BOB/5 and FIT-SEA/2, held in conjunction with the First Meeting of the Air Traffic Flow Management Task Force (ATFM/TF/1) and ADS/CPDLC Seminar during April 2005.

2.14 FIT-BOB/5 was informed that IATA had experienced some unforeseen delays in making arrangements with member airlines and consequently had been unable to finalize the CRA funding arrangements with Boeing, with the result that CRA services for the Bay of Bengal operational trial were still not available. However, IATA was pleased to advise FIT-BOB/5 that they were now at the final stage of reaching agreement with Boeing and expected that a contract would be signed by the end of April 2005.

2.15 IATA provided FIT-BOB/5 with details of the contract with Boeing and how the funding mechanism would work. The contract would be effective for 18 months. IATA would be a principal contracting partner with Boeing, and as such would be responsible for meeting the cost incurred by Boeing for operating the CRA in accordance with the defined requirements. Boeing would be paid in arrears and it should be possible to commence CRA services as soon as the contract was signed. All users of the data link services would be required to pay for the CRA services and a single charge would be levied on airlines by IATA in accordance with agreements with the States concerned. States would not bear any expense in this process and would not be required to participate in the invoicing and collection of charges other than providing the data and publishing their AIP Supplements (SUP).

2.16 Although the initial contract between IATA and Boeing would be for 18 months, the meeting was advised that it would be possible to extend the arrangement on an annual or triennial basis thereafter, should this interim approach to funding the CRA prove successful for the parties concerned.

2.17 IATA reported that to bring the CRA into operation, it would be necessary for IATA to also enter into formal arrangements with the States concerned to ensure provision of the necessary data and to enable IATA to collect charges from the users of the data link services. This would require States to notify users that charges would be levied for the provision of ADS and CPDLC and that IATA was authorized by the States concerned to invoice and collect charges specifically for the operation of the CRA. In regard to the notification to be issued by States on user charges and operation of the CRA, IATA would provide an example of wording that could be used in an AIP SUP and coordinate with the States concerned to complete the arrangements.

2.18 Arising from the discussions in regard to the funding of the CRA, the FIT-BOB/5 meeting requested the Regional Office under the guidance of the Air Transport Section to convene a special coordination meeting specifically to finalize the arrangements for funding and setting up of the BOB-CRA. The meeting was expected to finalize arrangements between IATA and India for the provision of funding. Accordingly, arrangements were made for the conduct of a 2-day SCM during the 2nd and 3rd of June 2005.

Agenda Item 3: Funding arrangements for the Bay of Bengal CRA

3.1 The Secretariat drew attention to the relatively modest sum of money that was involved in funding the CRA on an annual basis and that therefore any funding arrangements needed to be simple and easily administered, rather than complex and cumbersome.

3.2 The meeting considered a draft legal agreement between IATA and relevant States, which comprised the legal arrangements necessary to enable and facilitate the collection by IATA of a specific 'CRA Charge' from operators for the purposes of funding CRA services in the Bay of Bengal area. The meeting took into account that IATA would be entering into a separate legal agreement with Boeing in respect of the operation of the CRA and that the arrangements in this respect would therefore not be included in the agreements between States and IATA. IATA advised that the arrangements with Boeing had been finalized to the point that, once agreement was reached in regard to the arrangements between IATA and States, the contract with Boeing could be implemented and Boeing could commence providing CRA services.

3.3 Malaysia raised concerns in relation to the respective authority or legality of IATA, States and State agencies entering into such an arrangement. Malaysia provide an example of the current situation in Malaysia under which the Malaysia Airports Holdings Berhad held responsibility for the collection of terminal and aerodrome related charges and the Department of Civil Aviation held responsibility for the collection of enroute charges. Malaysia expressed concerns that what was being proposed would be perhaps incompatible with the Malaysian circumstances and would need the authority of Government rather than a State agency.

3.4 In responding to Malaysia's concerns, the Secretariat agreed that the domestic legal circumstances could vary widely from State to State and it was possible that State domestic considerations could lead to a revision in the provisions of the agreement. However, there were precedents that had been established in relation the funding of complex multinational infrastructure and services and it was anticipated that difficulties and complexities could be overcome.

3.5 The Secretariat reminded the meeting of a number of examples where States have provided one another with various services such as air traffic control, communications and meteorological information. But it was pointed out that technological developments such as ADS/CPDLC are bringing about a fundamental change reflected in a growing interest in and a need for multinational facilities and services serving international air navigation in airspace extending beyond the airspace served by a single State. The meeting was referred to Chapter 2, Section F of Doc 9161 – *Manual on Air Navigation Services Economics* for appropriate guidance on this matter.

3.6 It was noted that the primary reason for establishing such multinational facilities or services is to enable two or more States to carry out the services each has accepted responsibility for under the regional plan more efficiently and in a more cost effective manner than each of them could achieve on its own. The Secretariat drew attention to the basic financial and legal implications that need to be considered in establishing multinational facilities and services and welcomed the representation at this meeting of both technical and legal experts to ensure that progress could be made on financing aspects.

3.7 The Secretariat observed that progress on this matter would facilitate further implementation of regional safety monitoring initiatives to support implementation of ICAO's global air navigation plan. The meeting was advised the issue of funding such agencies had been raised in other ICAO Regions and that, as a result of the Council's decision on the Report of EANPG/45 9 June 2004, the Air Transport Bureau had been requested to include in its work programme for the current triennium the task to develop and propose a fair and equitable global method of cost recovery of the required RMA infrastructure.

3.8 Pending the development of this guidance material the meeting was urged to make progress on the matter of funding the CRA so that the operational trials could continue. The meeting was reminded that the proposal before it could be considered as interim in nature and that it could give way to a more sustainable model in the future if required.

3.9 In considering the draft agreement, the Secretariat drew the attention of the meeting to the potential duration of the circumstances in relation to the provision of CRA services. In light of the technical complexity of ADS/CPDLC service provision it was anticipated that technical problems would continue to arise in the context of ongoing operations, as well as in regard to an initial implementation. As an example, the meeting was advised that the Informal South Pacific ATS Coordination Group (ISPACG) had explored a number of CRA related issues at its last FIT meeting in March 2005, despite ADS and CPDLC operations having commenced in the South Pacific a number of years ago. The meeting was advised that although the need for a CRA for the Indian Ocean area was expected to be of a temporary nature, States would be well served to consider a temporary time frame in the order of 8-10 years, in order to accommodate the staggered implementation of ADS/CPDLC services throughout area.

3.10 IATA and the Secretariat clarified the roles of the respective parties to the proposed agreement, recognizing that under the terms of the Chicago Convention States retained responsibility for meeting ICAO provisions. In this respect, IATA was essentially acting to assist States to meet their responsibilities by providing an enabling mechanism to collect funds on behalf of a number of States for use in providing the CRA services required to be provided by States in respect of their responsibilities under Annex 11 safety management provisions.

3.11 In relation to the imposition of ad-hoc 'special purpose' charges in addition to normal air navigation charges, IATA clearly expressed the view that this was highly undesirable and that, to the extent practicable, such charges should be incorporated into routine air navigation charges. With regard to the CRA, IATA had noted that the relatively recent changes to ICAO provisions that now required increased safety management and safety monitoring activities by States would result in increased costs to States participating in the ADS/CPDLC operational trial.

3.12 The draft legal agreement between IATA and States was thoroughly reviewed and updated by the meeting, addressing many of the concerns raised at this and previous meetings. In recognition that India and Sri Lanka would be the two States initially involved in supporting the provision of data to IATA in order to facilitate the collection of a specific 'CRA Charge' from airspace users, the meeting drafted separate agreements between IATA and India, and IATA and Sri Lanka, for consideration by the parties involved as final agreements suitable for implementation. Copies of these documents have been included as **Appendices C and D**.

Agenda Item 4: Implementation arrangements for the Bay of Bengal CRA

4.1 The meeting considered implementation arrangements for the CRA. Once the agreements between IATA and the States concerned had been signed and the enabling activities described in the agreements had been commenced, IATA would be in a position to sign the agreement between IATA and Boeing, thereby allowing Boeing to commence the provision of CRA services. India and IATA undertook to continue close coordination with a view to finalizing the IATA ↔ India agreement as soon as possible. Although Sri Lanka was not present at the meeting, their support of the process was noted and IATA and Sri Lanka were similarly encouraged to continue close coordination in respect of finalizing this agreement.

4.2 The meeting recognized that although India and Sri Lanka would be the two States involved in providing data to IATA for charging purposes, the remaining States surrounding the Bay of Bengal should also be alerted to the imminent commencement of CRA services and requested that the Regional Office provide suitable advice to Thailand, Malaysia Indonesia and Myanmar in this respect. Also, surrounding States should alert airspace users in regard to the commencement of CRA services in support of the ADS/CPDLC operational trial and request users to submit problem reports in the FANS 1/A Operations Manual format to the CRA in respect of any difficulties experienced with ADS/CPDLC operations. The meeting drafted a generic AIP Supplement in this regard (**Appendix E**) and requested that the Regional Office include the draft AIP SUP in the notification to Bay of Bengal States

4.3 Unfortunately, a representative from Boeing's Technology Services area had not been able to attend the meeting, however the Secretariat and States undertook to continue coordination with Boeing in respect of CRA implementation activities. Although many of the CRA requirements were already contained in FANS 1/A Operations Manual, it was likely that further coordination between the States and the CRA in respect of CRA requirements would be necessary prior to commencing CRA services. For example, States would be expected to sign a confidentiality agreement with the CRA in respect of the provision of traffic movement and other data to the CRA.

4.4 The Secretariat had requested that the CRA provide a step-by-step checklist or similar tool to the States involved in order that the CRA requirements could be readily understood and complied with. It was anticipated that the CRA would provide this or similar guidance in the near term. In the mean time, India and Sri Lanka were encouraged to continue reporting problems in accordance with the existing arrangements as described in the FANS 1/A Operations Manual.

4.5 In order to ensure that the work toward implementation of CRA services continued at best speed, the meeting agreed to the following steps:

- 1) IATA to complete the fine detail and editorial work to the Agreements and provide 'execution' copies of the agreement documents to India and Sri Lanka as soon as possible;
- 2) IATA to coordinate with Sri Lanka in respect of progressing the Agreement to signature through State approval processes;
- 3) Airports Authority of India (AAI) to present the Agreement to the Board of AAI as soon as possible;
- 4) Subject to AAI Board approval, AAI to present the Agreement to the Government of India as soon as possible;
- 5) AAI to advise IATA immediately when Board and Government approval had been granted; and
- 6) AAI to coordinate with IATA to conduct formal signing of the Agreement.
- 7) Regional Office to coordinate with surrounding States in respect of the issuance of suitable AIP SUP notifying the implementation of CRA services.

Agenda Item 5: Any Other Business

5.1 There was no other business to be discussed.

6. Closing of the Meeting

6.1 In closing the meeting Mr. Tiede thanked the participants for their cooperation in reaching agreement to progress a suitable funding arrangement. The commencement of CRA services in the Bay of Bengal had presented many challenges that had required good cooperation between the Bay of Bengal States involved, IATA and ICAO. Mr. Tiede was pleased to note that as a result of this SCM, the agreements between IATA and India and Sri Lanka were substantially complete and that, following final editorial scrutiny by IATA, the agreements could be presented to State organizations and Governments as the final step before implementation. This represented a big step forward in providing CRA services in support of the ADS/CPDLC operational trial in the Bay of Bengal and was therefore a significant step towards implementing the provisions of the regional CNS/ATM plan in respect of the provision of ADS/CPDLC services. Mr. Tiede thanked IATA for their role in these developments and congratulated India for their ongoing initiatives and proposals to expand the operational trial into the Delhi and Mumbai FIRs in early 2006.

SCM BOB CRA
Appendix A to the Report

LIST OF PARTICIPANTS

STATE/NAME	DESIGNATION/ADDRESS	CONTACT DETAILS
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SCM BOB CRA
Appendix A to the Report

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*Extracted from Appendix B to the Report of the Special Coordination Meeting on the CRA
Funding for the Bay of Bengal (SCM-CRA, 8-10 December 2003)*

**PROPOSED FINANCING ARRANGEMENT FOR A CENTRAL REPORTING
AGENCY FOR THE IMPLEMENTATION OF ADS AND CPDLC AIR TRAFFIC
CONTROL SERVICES IN THE BAY OF BENGAL AREA**

1. Objectives and Scope

1.1 The overall objective is to implement ADS and CPDLC services by States for ATC operations in the Bay of Bengal Area in line with the *Asia Pacific Regional Plan for the New CNS/ATM Systems*.

1.2 As a step to achieve this objective, it is necessary to ensure that a safety assessment has demonstrated that an acceptable level of safety will be met and users have been consulted. To this end, BBACG/13 recognized that the establishment of a Central Reporting Agency (CRA) was critical to enabling States to implement operational ADS and CPDLC systems. It is therefore necessary to have the CRA to perform the essential technical analysis of the performance of these systems and to undertake the investigation of system failures and other technical malfunctions. This is essential to trace the cause of any problems whether in the aircraft or ground systems and to initiate remedial action by the responsible parties.

1.3 This clearly requires a commitment by States, but also requires highly specialized test equipment and simulation capability that is not readily available. Boeing provides a CRA service for the Pacific Region and indicated it would be willing to provide CRA services to FIT-BOB to support States in the Bay of Bengal area implement ADS and CPDLC systems. The proposed arrangement addresses the need to finance this service.

2. General Principles

2.1 Various options exist for financing air navigation services on a cooperative basis provided by two or more States, including informal agreements, international operating agencies, joint collections agencies and joint financing agreements. Each has its relative strengths and weaknesses as a model for financing a CRA. At the same time, no single existing model provides a unique match to the requirements of the CRA and it is necessary to develop a tailor-made arrangement incorporating the best features of the existing models, particularly the informal agreements because of their simplicity and flexibility and the joint financing agreements.

2.2 Accordingly, it is proposed that the key features to incorporate in the arrangement include:

- i. States, under the auspices of ICAO (FIT-BOB), should maintain overall control and oversight of the arrangement;
- ii. Efficiency be achieved by assigning tasks to the parties most suited to carry out the task (efficient division of labour)
- iii. The best possible methods should be used in the analysis and reporting;
- iv. The task should be performed at the lowest cost;
- v. Effectiveness as reflected in achievement of the objectives;
- vi. The provision of the service should be sustainable for the duration of the trials and as long as is required by FIT-BOB;

- vii. The arrangement must be simple and workable;
- viii. The arrangement should be capable of being adapted to changing circumstances; and
- ix. The system should be fair to all participating parties.

3. Assignment of Responsibilities

3.1 The States maintain primary oversight and control over the arrangement. Through FIT-BOB they specify the requirements of the Central Reporting Agency (CRA) and they arrange for funding the CRA. The reports of the CRA come directly to FIT-BOB and these are provided to the States concerned and to other relevant parties (users and related service operators).

3.2 On a trial basis of one year, it is recommended that FIT-BOB arranges for the establishment of a CRA, to accept IATA's offer to collect funds for the CRA, to seek additional support from other interested parties, and to keep the funding situation under review.

3.3 To initiate the trial, FIT-BOB should specify the tasks to be performed and the reports it expects to receive. In consultation with the CRA service provider, the participating States, service providers, and the users, FIT-BOB should develop a budget for the first year. FIT-BOB should then provide the specifications to IATA and request it to establish an arrangement for the provision of CRA services subject to the available funds. The CRA service provider provides its reports to FIT-BOB.

3.4 FIT-BOB distributes the reports to each of the States concerned and to other relevant parties. After a period of nine months, FIT-BOB should review the arrangement and assess its success. A decision should be made to continue the arrangement on the same basis into the second year at least two months prior to the end of the twelve month trial.

- END -



CENTRAL REPORTING AGENCY: AIRSPACE OF INDIA

**International Air Transport Association
800 Place Victoria
Montreal
Quebec
Canada**

THIS AGREEMENT is made this _____ day of _____ 2005

BETWEEN

- (1) **THE INTERNATIONAL AIR TRANSPORT ASSOCIATION** an association incorporated by a Special Act of Parliament of Canada with its head office at 800 Place Victoria, 800 Place Victoria, Montreal, Quebec, Canada H4Z 1M1, and offices at 77 Robinson Road, #05-00 SIA Building, Singapore 068896 (“**IATA**”)

AND

- (2) **AIRPORTS AUTHORITY OF INDIA**, representing the State of India, with its office at Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi 110003, India (“**AAI**”)

WHEREAS

- (1) The objectives of IATA are to promote safe, regular and economical air transport for the benefit of the peoples of the world, and to provide means for collaboration among air transport enterprises engaged directly or indirectly in international air transport service and to cooperate with ICAO and other international and national organizations;
- (2) The State of India, represented by AAI, in addressing its obligations with respect to the safety and efficiency in air navigation, particularly in and over its airspace, wishes to co-operate with IATA in the provision of a centralised facility for the technical analysis of the performance of datalink systems and investigating and resolving failures or problems relating to the use of such systems;
- (3) IATA has entered into an agreement with Boeing dated [insert] under which Boeing will provide the CRA Facility in accordance with the terms therein, the financing for which will be provided by IATA initially;
- (4) The State of India, represented by AAI, will require the Operators using its airspace, and in respect of which the CRA Facility is provided, to comply with the terms of a CRA AIP issued pursuant to this Agreement including without limitation payment for the CRA Facility.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this Agreement except where the context otherwise requires:

- “**Airspace**” shall mean the airspace over which the State of India has jurisdiction within the Kolkata, Chennai, Mumbai and Delhi Flight Information Regions, and in respect of which the CRA Facility is provided;
- “**Boeing**” shall mean The Boeing Company acting through Boeing Technology Services;
- “**CRA AIP**” shall mean an Aeronautical Information Publication issued by AAI pursuant to this Agreement and substantially in the form appearing in Schedule 1 to this Agreement;

“CRA Facility”	shall mean the Central Reporting Agency facility developed, maintained and provided under separate agreements between IATA and Boeing on the one hand and between IATA and AAI, representing the State of India on the other hand, at which the Operators and AAI may lodge reports relating to the use of datalink systems over the Airspace to enable technical analysis by Boeing with regard to system performance, failures or problems ;
“ICAO”	shall mean the International Civil Aviation Organization;
“Charge”	shall mean the aeronautical charge to be invoiced to and paid by the Operators for the CRA Facility, as more particularly described in the CRA AIP;
“Minimum Term”	shall mean from the date of this Agreement set forth above and expiring on 31 December 2006;
“Operators”	shall mean those airspace users who are normally subject to air navigation service charges and who use the Airspace.

- 1.2 In this Agreement except where the context otherwise requires:
- 1.2.1 Any reference to the plural includes the singular and vice versa;
 - 1.2.2 Any reference to any document, including this Agreement, includes such document as from time to time varied or supplemented in accordance with its terms;
 - 1.2.3 The Schedules herein form an integral part of this Agreement; and
 - 1.2.4 Headings are given for convenience only and shall not affect the interpretation of these Agreements.

2. Basic Provisions

- 2.1 This Agreement sets out the terms under which AAI, representing the State of India, and IATA shall co-operate to assist Boeing in the efficient and effective operation of the CRA Facility, including its funding.
- 2.2 IATA shall be entitled to recover the cost of providing and operating the CRA Facility from the Operators in accordance with terms of this Agreement and any CRA AIP.
- 2.3 With respect to the Charge, an existing CRA AIP shall only be amended upon the mutual consent of the parties.

3. Term

This Agreement shall come into force on the date here above and shall continue to be in force for the Minimum Term and thereafter for consecutive periods of one year unless terminated in accordance with the terms of this Agreement or otherwise agreed by the parties.

4. AAI Obligations

- 4.1 AAI shall take all necessary measures and execute all necessary documents as may be required to carry out and effect the intent and purpose of this Agreement but, without prejudice to the generality of the foregoing, shall:

- 4.1.1 provide IATA on a monthly basis with the information and any related documentation to be agreed between the parties to enable IATA to prepare appropriate invoices for submission to the Operators pursuant to Clause 2.2 of this Agreement. Such information or documentation shall be provided to IATA within 15 days following the end of the previous month, and by electronic mail in a Microsoft Excel file or by such other means or forms that may be agreed by the parties from time to time;
- 4.1.2 immediately upon the execution of this Agreement, issue a CRA AIP.
- 4.2 In the event that AAI fails or is unable to provide information or related documentation pursuant to Clause 4.1.1 of this Agreement to enable IATA to prepare the appropriate invoices, for two (2) consecutive months, IATA shall be entitled nevertheless to prepare and submit such invoices to Operators based on the amount invoiced for the month preceding the failure or inability.
- 4.3 Both parties shall, upon the request of one of the parties, meet to discuss the effect of a CRA AIP and, where appropriate, introduce amendments thereto.
- 4.4 In the event of a dispute arising from an invoice, AAI shall work with IATA to resolve the dispute with the Operator.
- 4.5 AAI may, at its discretion, exempt certain Operators, including without limitation State flights, from payment of the Charge provided that such discretion is exercised reasonably and in accordance with the spirit of this Agreement.

5. Obligations of IATA

- 5.1 IATA shall take all necessary measures and execute all necessary documents as may be required to carry out and effect the intent and purpose of this Agreement.
- 5.2 IATA shall take reasonable steps to ensure that Boeing provides promptly to AAI and relevant Operators reports of its investigation into the performance of datalink systems. In the event that Boeing fails to provide such reports for two consecutive months, AAI shall notify IATA and IATA shall, as soon as possible, review the subject matter thereof and notify the AAI of its findings and any proposed actions to remedy the failure.
- 5.3 The invoices to be submitted by IATA to the Operators shall state:
 - 5.3.1 the period for which they are applicable;
 - 5.3.2 that all operators shall pay the invoices within 30 days of receipt, and payments shall be made to:

[insert IATA bank account details]
 - 5.3.3 that Operators who are also members of the IATA Clearing House (ICH), the invoices shall be paid through the ICH in accordance with the ICH Regulations;
 - 5.3.4 that late payments shall be subject to a late payment fee of [number] percentage points plus the Base Lending Rate of the [bank] of Singapore on any outstanding balance;
 - 5.3.5 that any dispute arising from or in connection with an invoice shall be notified promptly by the Operator to IATA setting out the nature of the dispute and that the Operator shall co-operate with AAI and IATA to resolve the dispute as soon as possible.

6 Warranties and Representations

- 6.1 Each party represents and warrants to the other as follows as of the date hereof:

- 6.1.1 it has the full corporate or legal power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the performance by it of its obligations under this Agreement have been duly and validly authorised and approved by all requisite corporate or legal action and no other or further acts or proceedings on its part are necessary to authorise the execution, delivery and performance of this Agreement or the transactions contemplated hereunder;
- 6.1.2 no consent, approval, non-disapproval, authorisation, ruling, order of, notice to or registration with, any parliamentary, governmental or regulatory authority or any person, partnership, corporation, firm, trust or other entity is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby;
- 6.1.3 there is no action, suit, investigation or proceeding pending or, to its knowledge, threatened against it or its properties or rights, by or before any court, arbitrator or administrative or governmental body, which action, suit, investigation or proceeding could reasonably be expected to impair its ability to perform its obligations under this Agreement;
- 6.1.4 it is in compliance with all applicable laws, except where the failure to be in compliance with such applicable laws would not have a material adverse effect on it or impair in any respect its ability to perform its obligations hereunder; and,
- 6.1.5 all obligations to be performed under this Agreement shall be performed with all due skill, care and diligence.

7. Liability and Indemnity

- 7.1 Each party shall indemnify the other, its directors, officers, employees and agents against, and hold harmless each thereof from, any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgements, expenses and disbursements (including reasonable legal fees and expenses) (together “the Claims”) of whatsoever kind and nature arising directly or indirectly out of or in connection with the performance of this Agreement, except to the extent that such Claims resulted from any act or omission done by the other with intent to cause damage or recklessly and with knowledge that damage would probably result.
- 7.2 Neither party shall be liable to the other for any loss or damage including any consequential loss or special damages occasioned by errors or omissions in the delivery or non-delivery or late delivery of the required information and documentation to be provided by AAI pursuant to Clause 4.1.1.
- 7.3 IATA makes no warranty, representation or condition of any kind whatsoever concerning the CRA Facility and, in particular, its fitness for purpose, value, condition, operation or performance. All warranties, representations, obligations and liability of any kind whatsoever, whether in contract or tort, whether express or implied, or otherwise, in respect of the CRA Facility are expressly excluded.

8. Termination

- 8.1 Either party may terminate this Agreement by giving at least 6 months written notice to the other, such notice not to expire before the expiry of the Minimum Term and shall take effect from the first day of the calendar month following the date of the notice.
- 8.2 The parties may terminate this Agreement upon mutual consent.
- 8.3 Either party may terminate this Agreement forthwith by written notice to the other party if that other party:

- 8.3.1 is in material breach of any of its obligations under this Agreement and fails to remedy such breach within fourteen (14) days of being required to do so;
 - 8.3.2 makes any arrangement with or compounds with its creditors;
 - 8.3.3 appoints a receiver, an administrative receiver or similar officer;
 - 8.3.4 passes a resolution for, has a petition presented for, or enters into administration or liquidation; or,
 - 8.3.5 ceases trading or is or becomes insolvent.
- 8.4 In the event the Agreement is terminated or upon the expiration of the Minimum Term, such termination or expiration shall be without prejudice to any accrued rights of IATA including without limitation the right to submit invoices to the Operators and recover the amount thereof pursuant to Clause 2.2 of this Agreement.

9 Force Majeure

- 9.1 Neither party shall be liable in respect of any failure to fulfill its obligations under this Agreement if such failure is due to reasons or circumstances beyond its reasonable control including but not limited to government interference, direction or restriction, war or civil disorders, strikes, blockade, insurrections, riots, acts of nature, disasters, diseases, epidemics, terrorist actions, or other emergencies. In such circumstances, the parties shall resolve and determine amicably the solution to be adopted.

10. Confidentiality

- 10.1 Each party undertakes to each other that it shall not, without the prior written consent of the other, which consent shall not be unreasonably withheld, disclose to any person any Confidential Information, as defined in Clause 10.3, and agrees that this undertaking shall survive the termination of the Agreement irrespective of the reasons for the termination.
- 10.2 All Confidential Information is and shall remain exclusively the property of the party disclosing such Confidential Information and the disclosing party shall retain all right, title and interest therein.
- 10.3 Confidential Information shall mean
- 10.3.1 the negotiations leading up to and including this Agreement;
 - 10.3.2 any and all documents and information regarding or relating to this Agreement or which has been identified as confidential, wholly or partly, including but not limited to the levy, methods of operation, processes and systems, and Operator information;
 - 10.3.3 from the circumstances in good faith should be treated as confidential; and
 - 10.3.4 the parties ought reasonably to know is confidential;

provided that such documents or information that

- (i) is in the public domain or already known as of the date of execution of this Agreement to the receiving party;
- (ii) is placed in the public domain through no violation of this Agreement;
- (iii) is lawfully obtained from another source free of restriction;
- (iv) is independently developed by the receiving party without use of Confidential Information;
- (v) is disclosed or required to be disclosed pursuant to the lawful requirement of a court of competent jurisdiction or government or regulatory agency or authority;

shall not be regarded as Confidential Information and the receiving party shall have no confidentiality obligations with respect to such information.

11. General

11.1 Notice

Any notice to be given under this Agreement shall be in writing and shall be sent by air mail, facsimile transmission or electronic mail to the other party at the address and marked for the attention of the person set out below, or such address, number, electronic mail address or person as that party may notify the other from time to time in accordance with this Clause:

For IATA

Address: 77 Robinson Road
#05-00 SIA Building
Singapore 068896
Telephone No: +65 62397162
Facsimile No.: +65 65366267
Email: roiaspac@iata.org
For the Attention of: Mr David Behrens, Director, Safety, Operations and Infrastructure

For AAI

Address: Rajiv Gandhi Bhawan
Safdarjung Airport
New Delhi 110003
India
Telephone No: +91 11 24631684
Facsimile No.: +91 11 24611078
Email: edatmchqnad@aai.aero
For the Attention of: Mr Srikrishan, Executive Director – Air Traffic Management

11.2 Waiver

The rights of neither party shall be prejudiced or restricted by any indulgence or forbearance extended by the other party or by any delay in exercising or failure to exercise any right and no waiver by any party of any breach of the terms of this Agreement shall operate as a waiver for any other or further breach.

11.3 Modifications

No changes, modifications, amendments or variations to this Agreement shall be valid or binding upon either party unless made in writing and duly executed by authorized officers of both parties.

11.4 Severance

In the event that any part of this Agreement is, or shall become, or shall be declared illegal, invalid or unenforceable in any jurisdiction for any reason (including the provisions of any legislation or decision of any competent authority) such part shall be severed from this Agreement in the jurisdiction in question and such contravention, illegality, invalidity or unenforceability shall not in any way whatsoever prejudice or affect the remaining parts of this Agreement which shall continue in full force and effect.

11.5 Assignment

Neither party hereto shall assign or transfer or permit the assignment or transfer of this Agreement, nor delegate nor permit the delegation of their rights and obligations under this Agreement, without the prior written consent of the other party. Any purported assignment or transfer or delegation without such consent shall be null and void and of no force or effect.

11.6 Counterparts

This Agreement may be executed in any number of counterparts by the parties, each of which when executed and delivered shall constitute an original, but all of which shall together constitute one and the same instrument.

12. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England, excluding conflict of laws provisions, and the parties agree to submit to the exclusive jurisdiction of the English courts.

[Signatures appear on the following page]

International Air Transport Association

Airports Authority of India

Name:

Name:

Title:

Title:

Date: _____

Date: _____

Name:

Title:

Date: _____

SCHEDULE 1

Draft Aeronautical Information Publication Supplement

Establishment and operation of a Central Reporting Agency for data link services

INTRODUCTION

1. In accordance with regional planning agreements made under the auspices of International Civil Aviation Organization (ICAO) to enhance the safety and efficiency of air navigation, data-link capabilities have been installed in the Chennai, Delhi, Mumbai, Kolkata, Colombo, Bangkok, Jakarta, and Yangon Area Control Centres.
2. In co-operation with ICAO and the International Air Transport Association (IATA), a Central Reporting Agency (CRA) has been established to provide routine system and specific problem analyses for the progressive implementation of data link operations within the Kolkata, Chennai, Mumbai, Delhi and Colombo Flight Information Regions (FIRs). The CRA facility shall be provided by The Boeing Company (Boeing) to investigate and resolve any data-link problems. IATA and Boeing shall jointly establish and operate the CRA.
3. Operational trials using Kolkata, Chennai and Colombo ADS/CPDLC over the Bay of Bengal oceanic airspace began on 19 February 2004. Trials will also commence in the Delhi and Mumbai FIRs from early 2006.
4. In order to fund the cost of the CRA facility, the State of India has permitted IATA to defray such cost in the form of an aeronautical charge from all users operating within the oceanic airspace beyond VHF coverage within the Kolkata, Chennai, Mumbai, and Delhi FIRs. To that end, data on daily flight movements operating in the above airspace will be provided to IATA by the State of India.

PROBLEM REPORTING

5. In accordance with the provisions of the FANS 1/A Operations Manual, all operators using the above airspace should submit problem reports arising from, or in connection with, the use of datalink to the CRA at:

[insert address]

THE CRA CHARGE

6. With effect from [date], all operators shall pay an aeronautical charge for the establishment and operation of the CRA facility (the CRA Charge). The CRA Charge shall be USD4 per flight movement outside VHF coverage into, out of, or within the oceanic airspace of Kolkata and Chennai FIRs. The CRA Charge will be levied on operations outside VHF coverage within the oceanic portions of the Delhi and Mumbai FIRs from early 2006, coincident with the commencement of ADS/CPDLC trial operations in these FIRs.
7. The CRA Charge shall be invoiced by and payable to IATA.



CENTRAL REPORTING AGENCY: AIRSPACE OF SRI LANKA

**International Air Transport Association
800 Place Victoria
Montreal
Quebec
Canada**

THIS AGREEMENT is made this _____ day of _____ 2005

BETWEEN

- (1) **THE INTERNATIONAL AIR TRANSPORT ASSOCIATION** an association incorporated by a Special Act of Parliament of Canada with its head office at 800 Place Victoria, 800 Place Victoria, Montreal, Quebec, Canada H4Z 1M1, and offices at 77 Robinson Road, #05-00 SIA Building, Singapore 068896 (“**IATA**”)

AND

- (2) *[name of agency]*, representing the State of Sri Lanka, with its office at *[address]* (“**insert abbreviation**”)

WHEREAS

- (1) The objectives of IATA are to promote safe, regular and economical air transport for the benefit of the peoples of the world, and to provide means for collaboration among air transport enterprises engaged directly or indirectly in international air transport service and to cooperate with ICAO and other international and national organizations;
- (2) The State of Sri Lanka, represented by *[name of agency]*, in addressing its obligations with respect to the safety and efficiency in air navigation, particularly in and over its airspace, wishes to co-operate with IATA in the provision of a centralised facility for the technical analysis of the performance of datalink systems and investigating and resolving failures or problems relating to the use of such systems;
- (3) IATA will enter into an agreement with Boeing under which Boeing will provide the CRA Facility in accordance with the terms therein, the financing for which will be provided by IATA initially;
- (4) The State of Sri Lanka, represented by *[name of agency]*, will require the Operators using its airspace, and in respect of which the CRA Facility is provided, to comply with the terms of a CRA AIP issued pursuant to this Agreement including without limitation payment for the CRA Facility.

NOW IT IS HEREBY AGREED as follows:

1. Definitions

1.1 In this Agreement except where the context otherwise requires:

- “**Airspace**” shall mean the airspace over which the State of Sri Lanka has jurisdiction within the Colombo Flight Information Region, and in respect of which the CRA Facility is provided;
- “**Boeing**” shall mean The Boeing Company acting through Boeing Technology Services;
- “**CRA AIP**” shall mean an Aeronautical Information Publication issued by *[name of agency]* pursuant to this Agreement and substantially in the form appearing in Schedule 1 to this Agreement;

“CRA Facility”	shall mean the Central Reporting Agency facility developed, maintained and provided under separate agreements between IATA and Boeing on the one hand and between IATA and <i>[name of agency]</i> , representing the State of Sri Lanka on the other hand, at which the Operators and <i>[name of agency]</i> may lodge reports relating to the use of datalink systems over the Airspace to enable technical analysis by Boeing with regard to system performance, failures or problems ;
“ICAO”	shall mean the International Civil Aviation Organization;
“Charge”	shall mean the aeronautical charge to be invoiced to and paid by the Operators for the CRA Facility, as more particularly described in the CRA AIP;
“Minimum Term”	shall mean from the date of this Agreement set forth above and expiring on 31 December 2006;
“Operators”	shall mean those airspace users who are normally subject to air navigation service charges and who use the Airspace.

- 1.2 In this Agreement except where the context otherwise requires:
- 1.2.1 Any reference to the plural includes the singular and vice versa;
 - 1.2.2 Any reference to any document, including this Agreement, includes such document as from time to time varied or supplemented in accordance with its terms;
 - 1.2.3 The Schedules herein form an integral part of this Agreement; and
 - 1.2.4 Headings are given for convenience only and shall not affect the interpretation of these Agreements.

2. Basic Provisions

- 2.1 This Agreement sets out the terms under which *[name of agency]*, representing the State of Sri Lanka, and IATA shall co-operate to assist Boeing in the efficient and effective operation of the CRA Facility, including its funding.
- 2.2 IATA shall be entitled to recover the cost of providing and operating the CRA Facility from the Operators in accordance with terms of this Agreement and any CRA AIP.
- 2.3 With respect to the Charge, an existing CRA AIP shall only be amended upon the mutual consent of the parties.

3. Term

This Agreement shall come into force on the date here above and shall continue to be in force for the Minimum Term and thereafter for consecutive periods of one year unless terminated in accordance with the terms of this Agreement or otherwise agreed by the parties.

4. *[Name of agency]* Obligations

- 4.1 *[Name of agency]* shall take all necessary measures and execute all necessary documents as may be required to carry out and effect the intent and purpose of this Agreement but, without prejudice to the generality of the foregoing, shall:

- 4.1.1 provide IATA on a monthly basis with the information and any related documentation to be agreed between the parties to enable IATA to prepare appropriate invoices for submission to the Operators pursuant to Clause 2.2 of this Agreement. Such information or documentation shall be provided to IATA within 15 days following the end of the previous month, and by electronic mail in a Microsoft Excel file or by such other means or forms that may be agreed by the parties from time to time;
- 4.1.2 immediately upon the execution of this Agreement, issue a CRA AIP.
- 4.2 In the event that *[name of agency]* fails or is unable to provide information or related documentation pursuant to Clause 4.1.1 of this Agreement to enable IATA to prepare the appropriate invoices, for two (2) consecutive months, IATA shall be entitled nevertheless to prepare and submit such invoices to Operators based on the amount invoiced for the month preceding the failure or inability.
- 4.3 Both parties shall, upon the request of one of the parties, meet to discuss the effect of a CRA AIP and, where appropriate, introduce amendments thereto.
- 4.4 In the event of a dispute arising from an invoice, *[name of agency]* shall work with IATA to resolve the dispute with the Operator.
- 4.5 *[Name of agency]* may, at its discretion, exempt certain Operators, including without limitation State flights, from payment of the Charge provided that such discretion is exercised reasonably and in accordance with the spirit of this Agreement.

5. Obligations of IATA

- 5.1 IATA shall take all necessary measures and execute all necessary documents as may be required to carry out and effect the intent and purpose of this Agreement.
- 5.2 IATA shall take reasonable steps to ensure that Boeing provides promptly to *[name of agency]* and relevant Operators reports of its investigation into the performance of datalink systems. In the event that Boeing fails to provide such reports for two consecutive months, *[name of agency]* shall notify IATA and IATA shall, as soon as possible, review the subject matter thereof and notify the *[name of agency]* of its findings and any proposed actions to remedy the failure.
- 5.3 The invoices to be submitted by IATA to the Operators shall state:
 - 5.3.1 the period for which they are applicable;
 - 5.3.2 that all Operators shall pay the invoices within 30 days of receipt, and payments shall be made to:

[insert IATA bank account details]
 - 5.3.3 that Operators who are also members of the IATA Clearing House (ICH), the invoices shall be paid through the ICH in accordance with the ICH Regulations;
 - 5.3.4 that late payments shall be subject to a late payment fee of *[number]* percentage points plus the Base Lending Rate of the *[bank]* of Singapore on any outstanding balance;
 - 5.3.5 that any dispute arising from or in connection with an invoice shall be notified promptly by the Operator to IATA setting out the nature of the dispute and that the Operator shall co-operate with *[name of agency]* and IATA to resolve the dispute as soon as possible.

6 Warranties and Representations

- 6.1 Each party represents and warrants to the other as follows as of the date hereof:
- 6.1.1 it has the full corporate or legal power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the performance by it of its obligations under this Agreement have been duly and validly authorised and approved by all requisite corporate or legal action and no other or further acts or proceedings on its part are necessary to authorise the execution, delivery and performance of this Agreement or the transactions contemplated hereunder;
 - 6.1.2 no consent, approval, non-disapproval, authorisation, ruling, order of, notice to or registration with, any parliamentary, governmental or regulatory authority or any person, partnership, corporation, firm, trust or other entity is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby;
 - 6.1.3 there is no action, suit, investigation or proceeding pending or, to its knowledge, threatened against it or its properties or rights, by or before any court, arbitrator or administrative or governmental body, which action, suit, investigation or proceeding could reasonably be expected to impair its ability to perform its obligations under this Agreement;
 - 6.1.4 it is in compliance with all applicable laws, except where the failure to be in compliance with such applicable laws would not have a material adverse effect on it or impair in any respect its ability to perform its obligations hereunder; and,
 - 6.1.5 all obligations to be performed under this Agreement shall be performed with all due skill, care and diligence.

7. Liability and Indemnity

- 7.1 Each party shall indemnify the other, its directors, officers, employees and agents against, and hold harmless each thereof from, any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgements, expenses and disbursements (including reasonable legal fees and expenses) (together “the Claims”) of whatsoever kind and nature arising directly or indirectly out of or in connection with the performance of this Agreement, except to the extent that such Claims resulted from any act or omission done by the other with intent to cause damage or recklessly and with knowledge that damage would probably result.
- 7.2 Neither party shall be liable to the other for any loss or damage including any consequential loss or special damages occasioned by errors or omissions in the delivery or non-delivery or late delivery of the required information and documentation to be provided by *[name of agency]* pursuant to Clause 4.1.1.
- 7.3 IATA makes no warranty, representation or condition of any kind whatsoever concerning the CRA Facility and, in particular, its fitness for purpose, value, condition, operation or performance. All warranties, representations, obligations and liability of any kind whatsoever, whether in contract or tort, whether express or implied, or otherwise, in respect of the CRA Facility are expressly excluded.

8. Termination

- 8.1 Either party may terminate this Agreement by giving at least 6 months written notice to the other, such notice not to expire before the expiry of the Minimum Term and shall take effect from the first day of the calendar month following the date of the notice.
- 8.2 The parties may terminate this Agreement upon mutual consent.

- 8.3 Either party may terminate this Agreement forthwith by written notice to the other party if that other party:
- 8.3.1 is in material breach of any of its obligations under this Agreement and fails to remedy such breach within fourteen (14) days of being required to do so;
 - 8.3.2 makes any arrangement with or compounds with its creditors;
 - 8.3.3 appoints a receiver, an administrative receiver or similar officer;
 - 8.3.4 passes a resolution for, has a petition presented for, or enters into administration or liquidation; or,
 - 8.3.5 ceases trading or is or becomes insolvent.
- 8.4 In the event the Agreement is terminated or upon the expiration of the Minimum Term, such termination or expiration shall be without prejudice to any accrued rights of IATA including without limitation the right to submit invoices to the Operators and recover the amount thereof pursuant to Clause 2.2 of this Agreement.

9. Force Majeure

- 9.1 Neither party shall be liable in respect of any failure to fulfill its obligations under this Agreement if such failure is due to reasons or circumstances beyond its reasonable control including but not limited to government interference, direction or restriction, war or civil disorders, strikes, blockade, insurrections, riots, acts of nature, disasters, diseases, epidemics, terrorist actions, or other emergencies. In such circumstances, the parties shall resolve and determine amicably the solution to be adopted.

10. Confidentiality

- 10.1 Each party undertakes to each other that it shall not, without the prior written consent of the other, which consent shall not be unreasonably withheld, disclose to any person any Confidential Information, as defined in Clause 10.3, and agrees that this undertaking shall survive the termination of the Agreement irrespective of the reasons for the termination.
- 10.2 All Confidential Information is and shall remain exclusively the property of the party disclosing such Confidential Information and the disclosing party shall retain all right, title and interest therein.
- 10.3 Confidential Information shall mean
- 10.3.1 the negotiations leading up to and including this Agreement;
 - 10.3.2 any and all documents and information regarding or relating to this Agreement or which has been identified as confidential, wholly or partly, including but not limited to the levy, methods of operation, processes and systems, and Operator information;
 - 10.3.3 from the circumstances in good faith should be treated as confidential; and
 - 10.3.4 the parties ought reasonably to know is confidential;

provided that such documents or information that

- (i) is in the public domain or already known as of the date of execution of this Agreement to the receiving party;
- (ii) is placed in the public domain through no violation of this Agreement;
- (iii) is lawfully obtained from another source free of restriction;
- (iv) is independently developed by the receiving party without use of Confidential Information;
- (v) is disclosed or required to be disclosed pursuant to the lawful requirement of a court of competent jurisdiction or government or regulatory agency or authority;

shall not be regarded as Confidential Information and the receiving party shall have no confidentiality obligations with respect to such information.

11. General

11.1 Notice

Any notice to be given under this Agreement shall be in writing and shall be sent by air mail, facsimile transmission or electronic mail to the other party at the address and marked for the attention of the person set out below, or such address, number, electronic mail address or person as that party may notify the other from time to time in accordance with this Clause:

For IATA

Address: 77 Robinson Road
#05-00 SIA Building
Singapore 068896
Telephone No: +65 62397162
Facsimile No.: +65 65366267
Email: roiaspac@iata.org
For the Attention of: Mr David Behrens, Director, Safety, Operations and Infrastructure

For [name of agency]

Address:
Telephone No:
Facsimile No.:
Email:
For the Attention of:

11.2 Waiver

The rights of neither party shall be prejudiced or restricted by any indulgence or forbearance extended by the other party or by any delay in exercising or failure to exercise any right and no waiver by any party of any breach of the terms of this Agreement shall operate as a waiver for any other or further breach.

11.3 Modifications

No changes, modifications, amendments or variations to this Agreement shall be valid or binding upon either party unless made in writing and duly executed by authorized officers of both parties.

11.4 Severance

In the event that any part of this Agreement is, or shall become, or shall be declared illegal, invalid or unenforceable in any jurisdiction for any reason (including the provisions of any legislation or decision of any competent authority) such part shall be severed from this Agreement in the jurisdiction in question and such contravention, illegality, invalidity or unenforceability shall not in any way whatsoever prejudice or affect the remaining parts of this Agreement which shall continue in full force and effect.

11.5 Assignment

Neither party hereto shall assign or transfer or permit the assignment or transfer of this Agreement, nor delegate nor permit the delegation of their rights and obligations under this Agreement, without the prior written consent of the other party. Any purported assignment or transfer or delegation without such consent shall be null and void and of no force or effect.

11.6 Counterparts

This Agreement may be executed in any number of counterparts by the parties, each of which when executed and delivered shall constitute an original, but all of which shall together constitute one and the same instrument.

12. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England, excluding conflict of laws provisions, and the parties agree to submit to the exclusive jurisdiction of the English courts.

[Signatures appear on the following page]

International Air Transport Association

[name of agency]

Name:

Name:

Title:

Title:

Date:

Date: _____

Name:

Title:

Date:

SCHEDULE 1

Draft Aeronautical Information Publication Supplement

Establishment and operation of a Central Reporting Agency for data link services

INTRODUCTION

1. In accordance with regional planning agreements made under the auspices of International Civil Aviation Organization (ICAO) to enhance the safety and efficiency of air navigation, data-link capabilities have been installed in the Chennai, Delhi, Mumbai, Kolkata, Colombo, Bangkok, Jakarta, and Yangon Area Control Centres.
2. In co-operation with ICAO and the International Air Transport Association (IATA), a Central Reporting Agency (CRA) has been established to provide routine system and specific problem analyses for the progressive implementation of data link operations within the Kolkata, Chennai, Mumbai, Delhi and Colombo Flight Information Regions (FIRs). The CRA facility shall be provided by The Boeing Company (Boeing) to investigate and resolve any data-link problems. IATA and Boeing shall jointly establish and operate the CRA.
3. Operational trials using Kolkata, Chennai and Colombo ADS/CPDLC over the Bay of Bengal oceanic airspace began on 19 February 2004.
4. In order to fund the cost of the CRA facility, the State of Sri Lanka has permitted IATA to defray such cost in the form of an aeronautical charge from all users operating within the oceanic airspace beyond VHF coverage within the Colombo FIR. To that end, data on daily flight movements operating in the above airspace will be provided to IATA by the State of Sri Lanka.

PROBLEM REPORTING

5. In accordance with the provisions of the FANS 1/A Operations Manual, all operators using the above airspace should submit problem reports arising from, or in connection with, the use of datalink to the CRA at:

[insert address]

THE CRA CHARGE

6. With effect from [date], all operators shall pay an aeronautical charge for the establishment and operation of the CRA facility (the CRA Charge). The CRA Charge shall be USD4 per flight movement outside VHF coverage into, out of, or within the oceanic airspace of Colombo FIR.
7. The CRA Charge shall be invoiced by and payable to IATA.

Draft Aeronautical Information Publication Supplement (for Thailand, Malaysia, Indonesia, Myanmar etc)

Establishment and operation of a Central Reporting Agency for data link services

INTRODUCTION

1. In accordance with regional planning agreements made under the auspices of International Civil Aviation Organization (ICAO) to enhance the safety and efficiency of air navigation, data-link capabilities have been installed in theArea Control Centre.
2. In co-operation with ICAO and the International Air Transport Association (IATA), a Central Reporting Agency (CRA) has been established to provide routine system and specific problem analyses for the progressive implementation of data link operations within Bay of Bengal area. The CRA facility shall be provided by The Boeing Company (Boeing) to investigate and resolve any data-link problems. IATA and Boeing shall jointly establish and operate the CRA.
3. Operational ADS/CPDLC trials within the Kolkata and Chennai FIRs commenced on 19 February 2004.
4. Operational ADS/CPDLC trials within the (insert FIR name) FIR commenced/will commence on (insert date)
- 5.

PROBLEM REPORTING

- 5 In accordance with the provisions of the FANS 1/A Operations Manual, all operators using the above airspace should submit problem reports arising from, or in connection with, the use of datalink to the CRA at:

[insert address]