AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE EUROPEAN UNION
ON THE PROCESSING AND TRANSFER
OF PASSENGER NAME RECORD (PNR) DATA
BY AIR CARRIERS TO
THE UNITED STATES DEPARTMENT
OF HOMELAND SECURITY (DHS)
(2007 PNR AGREEMENT)

THE UNITED STATES OF AMERICA

and

THE EUROPEAN UNION:

DESIRING to prevent and combat terrorism and transnational crime effectively as a means of protecting their respective democratic societies and common values;

RECOGNISING that information sharing is an essential component in the fight against terrorism and transnational crime and that in this context the use of PNR data is an important tool;

RECOGNISING that, in order to safeguard public security and for law enforcement purposes, rules should be laid down on the transfer of PNR data by air carriers to DHS;

RECOGNISING the importance of preventing and combating terrorism and related crimes, and other serious crimes that are transnational in nature, including organised crime, while respecting fundamental rights and freedoms, notably privacy;

RECOGNISING that U.S. and European privacy law and policy share a common basis and that any differences in the implementation of these principles should not present an obstacle to cooperation between the U.S. and the European Union (EU);

HAVING REGARD to international conventions, U.S. statutes, and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to make PNR data available to DHS to the extent they are collected and contained in the air carrier's automated reservation/departure control systems (hereinafter "reservation systems"), and comparable requirements implemented in the EU;

HAVING REGARD to Article 6 paragraph 2 of the Treaty on European Union on respect for fundamental rights, and in particular to the related right to the protection of personal data;

NOTING the former agreements regarding PNR between the United States of America and the European Community of 28 May 2004 and between the United States of America and the European Union of 19 October 2006;

HAVING REGARD to relevant provisions of the Aviation Transportation Security Act of 2001, the Homeland Security Act of 2002, the Intelligence Reform and Terrorism Prevention Act of 2004 and Executive Order 13388 regarding cooperation between agencies of the United States government in combating terrorism, as well as the Privacy Act of 1974, Freedom of Information Act and the E-Government Act of 2002;

NOTING that the European Union should ensure that air carriers with reservation systems located within the European Union make available PNR data to DHS and comply with the technical requirements for such transfers as detailed by DHS;

AFFIRMING that this Agreement does not constitute a precedent for any future discussions or negotiations between the United States and the European Union, or between either of the Parties and any State regarding the processing and transfer of PNR or any other form of data;

SEEKING to enhance and encourage cooperation between the parties in the spirit of transatlantic partnership;

HAVE AGREED AS FOLLOWS:

(1) On the basis of the assurances in DHS's letter explaining its safeguarding of PNR (the DHS letter), the European Union will ensure that air carriers operating passenger flights in foreign air transportation to or from the United States of America will make available PNR data contained in their reservation systems as required by DHS.

(2) DHS will immediately transition to a push system for the transmission of data by such air carriers no later than January 1, 2008 for all such air carriers that have implemented such a system that complies with DHS's technical requirements. For those air carriers that do not implement such a system, the current systems shall remain in effect until the carriers have implemented a system that complies with DHS's technical requirements. Accordingly, DHS will electronically access the PNR from air carriers' reservation systems located within the territory of the Member States of the European Union until there is a satisfactory system in place allowing for the transmission of such data by the air carriers.

(3) DHS shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable U.S. laws, constitutional requirements, and without unlawful discrimination, in particular on the basis of nationality and country of residence. DHS's letter sets forth these and other safeguards.

(4) DHS and the EU, will periodically review the implementation of this Agreement, the DHS letter, and U.S. and EU PNR policies and practices with a view to mutually assuring the effective operation and privacy protection of their systems.

(5) By this Agreement, DHS expects that it is not being asked to undertake data protection measures in its PNR system that are more stringent than those applied by European authorities for their domestic PNR systems. DHS does not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. If its expectation is not met, DHS reserves the right to suspend relevant provisions of the DHS letter while conducting consultations with the EU with a view to reaching a prompt and satisfactory resolution. In the event that a PNR system is implemented in the European Union or in one or more of its Member States that requires air carriers to make available to authorities PNR data for persons whose travel itinerary includes a flight to or from the European Union, DHS shall, strictly on the basis of reciprocity, actively promote the cooperation of the airlines within its jurisdiction.

(6) For the application of this Agreement, DHS is deemed to ensure an adequate level of protection for PNR data transferred from the European Union. Concomitantly, the EU will not interfere with relationships between the United States and third countries for the exchange of passenger information on data protection grounds.

(7) The U.S. and the EU will work with interested parties in the aviation industry to promote greater visibility for notices describing PNR systems (including redress and collection practices) to the travelling public and will encourage airlines to reference and incorporate these notices in the official contract of carriage.

(8) The exclusive remedy if the EU determines that the U.S. has breached this Agreement is the termination of this Agreement and the revocation of the adequacy determination referenced in paragraph (6). The exclusive remedy if the U.S. determines that the EU has breached this agreement is the termination of this Agreement and the revocation of the DHS letter.

(9) This Agreement will enter into force on the first day of the month after the date on which the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose. This Agreement will apply provisionally as of the date of signature. Either Party may terminate or suspend this Agreement at any time by notification through diplomatic channels. Termination will take effect thirty (30) days from the date of notification thereof to the other Party unless either Party deems a shorter notice period essential for its national security or homeland security interests. This Agreement and any obligations there under will expire and cease to have effect seven years after the date of signature unless the parties mutually agree to replace it.

This Agreement is not intended to derogate from or amend the laws of the United States of America or the European Union or its Member States. This Agreement does not create or confer any right or benefit on any other person or entity, private or public.

This Agreement shall be drawn up in duplicate in the English language. It shall also be drawn up in the Bulgarian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, and the Parties shall approve these language versions. Once approved, the versions in these languages shall be equally authentic.

Done at Washington on 26 July 2007 and at Brussels on 23 July 2007

FOR THE UNITED STATES OF AMERICA



FOR THE EUROPEAN UNION

